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Contents

Federal Register

Vol. 62, No. 128

Thursday, July 3, 1997

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 62, No. 128
Thursday, July 3, 1997

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1137

[DA–97–05]

Milk in the Eastern Colorado Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; suspension.

SUMMARY: This document suspends certain performance standards of the Eastern Colorado Federal milk order. Mid-America Dairymen, Inc., a cooperative association that supplies milk for the market's fluid needs, requested the suspension. The suspension will make it easier for handlers to qualify milk for pool status and will prevent uneconomic milk movements that otherwise would be required to maintain pool status for milk of producers who have been historically associated with the market. The suspension will be effective through 1999.

EFFECTIVE DATE: The suspension to § 1137.7 is effective from September 1, 1997, through February 28, 1999. The suspensions to § 1137.12 are effective from September 1, 1997, through August 31, 1999.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368, e-mail address: Clifford __ M __ Carman@usda.gov.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued April 30, 1997; published May 6, 1997 (62 FR 24610).

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

For the month of March 1997, the milk of 415 producers was pooled on the Eastern Colorado Federal milk order. Of these producers, 308 producers were below the 326,000-pound production guideline and are considered small businesses. During this same period, there were 10 handlers operating 11 pool plants under the Eastern Colorado order. Five of these handlers would be considered small businesses.

This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers who have been historically associated with this market will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing. This suspension will not result in any additional regulatory burden on handlers in the Eastern Colorado marketing area.

Preliminary Statement

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Eastern Colorado marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on May 6, 1997 (62 FR 24610) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. Two comments supporting the proposed suspension were received.

After consideration of all relevant material, including the proposal in the notice, the comments received and other available information, it is hereby found and determined that the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. For the months of September 1, 1997, through February 28, 1999: In the second sentence of § 1137.7(b), the words ''plant which has qualified as a'' and ''of March through August''; and

2. For the months of September 1, 1997, through August 31, 1999: In the first sentence of § 1137.12(a)(1), the words ''from whom at least three

deliveries of milk are received during the month at a distributing pool plant''; and in the second sentence, the words ''30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of'', and the word ''distributing''.

Statement of Consideration

This rule suspends certain portions of the pool plant and producer definitions of the Eastern Colorado order. The suspension will make it easier for handlers to qualify milk for pooling under the order.

The suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that has pooled milk of dairy farmers on the Eastern Colorado order for several years. Mid-Am requested the suspension to prevent the uneconomic and inefficient movement of milk for the sole purpose of pooling the milk of producers who have been historically associated with the Eastern Colorado order.

Mid-Am and Western Dairymen Cooperative, Inc. (WDCI) filed comments in support of the suspension. Mid-Am asserts that they have made a commitment to supply the fluid milk requirements of distributing plants if the suspension request is granted. Without the suspension action, to qualify certain of its milk for pooling, it would be necessary for the cooperative to ship milk from distant farms to Denver-area bottling plants. The distant milk would displace milk produced on nearby farms that would then have to be shipped from the Denver area to manufacturing plants located in outlying areas. WDCI further reiterates the need for the suspension to assure continued pooling of producers associated with the market and to prevent such uneconomic milk movements.

Both Mid-Am and WDCI requested continuation of the suspension beyond the time period noticed in the proposed suspension. Both cooperatives expressed a desire to have the suspension extend until the Federal order reform process under the Federal Agriculture Improvement and Reform Act of 1996 is implemented.

For the months of September 1997 through February 1999, the restriction on the months when automatic pool plant status applies for supply plants will be removed. For the months of September 1997 through August 1999, the touch-base requirement will not apply and the diversion allowance for cooperatives will be raised.

These provisions have been suspended for several years to maintain the pool status of producers who have historically supplied the fluid needs of Eastern Colorado distributing plants. The marketing conditions which justified the prior suspensions continue to exist. There are ample supplies of locally produced milk that can be delivered directly from farms to distributing plants to meet the market's fluid needs without requiring shipments from supply plants.

Since the suspension has been granted on a continual basis since 1985, and the marketing conditions that originally warranted the suspension continue to exist, it is found appropriate to extend the suspension period from 1998 to 1999.

This suspension is found to be necessary for the purpose of assuring that producers' milk will not have to be moved in an uneconomic and inefficient manner to ensure that producers whose milk has long been associated with the Eastern Colorado marketing area will continue to benefit from pooling and pricing under the order.

List of Subjects in 7 CFR Part 1137

Milk marketing orders.

For the reasons set forth in the preamble 7 CFR Part 1137, is amended as follows:

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

1. The authority citation for 7 CFR Part 1137 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 1137.7 [Suspended in Part]

2. In § 1137.7(b), the second sentence is amended by suspending the words ''plant which has qualified as a'' and ''of March through August'' from September 1, 1997, through February 28, 1999.

§ 1137.12 [Suspended in part]

3. In § 1137.12(a)(1), the first sentence is amended by suspending the words ''from whom at least three deliveries of milk are received during the month at a distributing pool plant'' from September 1, 1997, through August 31, 1999.

4. In § 1137.12(a)(1), the second sentence is amended by suspending the words ''30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of'', and the word ''distributing'' from September 1, 1997, through August 31, 1999.

Dated: June 27, 1997.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 97–17508 Filed 7–2–97; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 902

[No. 97–42]

RIN 3069–AA51

Procedure For Imposing Assessments on the FHLBanks

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its procedure for imposing semiannual assessments on the Federal Home Loan Banks (FHLBanks) as part of the conversion of Finance Board operations from the calendar year to the federal fiscal year.

EFFECTIVE DATE: The final rule will become effective August 4, 1997.

FOR FURTHER INFORMATION CONTACT: John C. Waters, Associate Director, Office of Resource Management, 202/408–2860, or Janice A. Kaye, Attorney-Advisor, Office of General Counsel, 202/408–2505, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Under section 18(b)(1) of the Federal Home Loan Bank Act (Bank Act), the Finance Board has the authority to impose a semiannual assessment on the FHLBanks in an amount sufficient to provide for the payment of the Finance Board's estimated expenses for the period covered by the assessment. *See* 12 U.S.C. 1438(b)(1). Section 18(b)(3) of the Bank Act requires the Finance Board to offset the amount of the current semiannual assessment by any amount it determines is remaining from a previous assessment. *See id.* 1438(b)(2).

In 1993, The Finance Board by regulation implemented its authority to assess the FHLBanks. *See* 58 FR 19195 (Apr. 13, 1993), codified at 12 CFR 902.2. The current rule requires the Finance Board to adopt an annual budget of expenses for each calendar year and authorizes the Finance Board to impose two semiannual assessments on the FHLBanks in each calendar year to pay its approved expenses. *See* 12 CFR 902.2. The current rule also establishes the procedure the Finance Board follows when imposing an assessment on the FHLBanks. *See id.*

Effective October 1, 1997, the Finance Board will transfer responsibility for operational support of its accounting and personnel systems from the Office of Thrift Supervision (OTS) to the

Department of Agriculture's National Finance Center (NFC). Unlike the OTS, the NFC operates according to the federal fiscal year, which spans a 12-month period beginning October 1 and ending September 30. Thus, the Finance Board must convert its operations from a calendar to a federal fiscal year basis. One of the changes necessary to complete the Finance Board's conversion from a calendar to a federal fiscal year is an amendment to the Finance Board regulation concerning FHLBank assessments to reflect a fiscal year cycle. The Finance Board is also amending the regulation to clarify the procedures it will follow when making an assessment on the FHLBanks.

II. Analysis of the Final Rule

In accordance with section 18(b)(1) of the Bank Act, § 902.2(a) of the final rule authorizes the Finance Board to impose assessments on the FHLBanks to pay its expenses. *See* 12 U.S.C. 1438(b)(1); 12 CFR 902.2(a). More specifically, § 902.2(a) of the final rule authorizes the Finance Board to impose a semiannual assessment on the FHLBanks in an aggregate amount it determines to be sufficient to pay its estimated expenses for the period covered by the assessment.

Section 902.2(b) of the final rule establishes the procedure for imposing assessments on the FHLBanks. In order to effect the changeover from a calendar to a federal fiscal year, paragraph (b)(1) of the final rule requires the Finance Board, at or near the end of each fiscal year, to approve an annual budget of Finance Board expenses for the following fiscal year and to provide promptly a copy of the approved budget to each Bank president. Under the current rule, the Finance Board must approve its budget of expenses near the end of, and for the next, calendar year. *See* 12 CFR 902.2(b).

Paragraph (b)(2) of the final rule combines provisions that appear currently in §§ 902.2(c), (d), and (f). *See id.* §§ 902.2(c), (d), (f). Like § 902.2(c) of the current rule, paragraph (b)(2) requires the Finance Board to assess the FHLBanks semiannually in an aggregate amount sufficient to meet the Finance Board's administrative and operating expenses. *See id.* § 902.2(c). As under § 902.2(d) of the current rule, the final rule requires the Finance Board to offset a current semiannual assessment by any amount the Finance Board determines is remaining from a previous assessment. *See id.* § 902.2(d). Since the source of revenue is irrelevant in determining whether any amount remains from a previous assessment, the Finance Board has eliminated the provision concerning revenues received from subleasing portions of its office building. *See id.* § 902.2(d)(1). Similar to § 902.2(f) of the current rule, paragraph (b)(2) of the final rule requires the Finance Board to notify promptly each FHLBank president in writing of the amount of any assessment. *See id.* § 902.2(f).

Paragraph (b)(3) of the final rule combines provisions that appear currently in §§ 902.2(e) and (g). *See id.* §§ 902.2(e), (g). Like § 902.2(e) of the current rule, paragraph (b)(3) of the final rule requires each FHLBank to pay a *pro rata* share of any assessment imposed by the Finance Board. *See id.* § 902.2(e). Both the current and final rules require the Finance Board to calculate each FHLBank's *pro rata* share based on the ratio between the total paid-in value of that FHLBank's capital stock relative to the aggregate total paid-in value of the capital stock of every FHLBank. *See id.* Similar to § 902.2(g) of the current rule, the final rule requires the Finance Board to notify promptly each Bank in writing of the amount of its *pro rata* share of any assessment. *See id.* § 902.2(g).

Although every FHLBank remits its *pro rata* share of each assessment to the Finance Board in equal monthly installments, under § 902.2(h) of the current rule, a monthly payment schedule is not mandatory. *See id.* § 902.2(h). To reflect current practice, paragraph (b)(4) of the final rule requires each FHLBank to pay its *pro rata* share in equal monthly installments during the semiannual period covered by the assessment unless otherwise instructed in writing by the Finance Board.

III. Notice and Public Participation

The notice and comment procedure required by the Administrative Procedure Act is inapplicable to this final rule because it is a rule of agency procedure. *See* 5 U.S.C. 553(b)(3)(A).

IV. Regulatory Flexibility Act

The Finance Board is adopting this technical amendment in the form of a final rule and not as a proposed rule. Therefore, the provisions of the Regulatory Flexibility Act do not apply. *See id.* 601(2), 603(a).

V. Paperwork Reduction Act

This final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects in 12 CFR Part 902

Administrative practice and procedure, Assessments, Federal home loan banks, Government contracts, Minority businesses, Mortgages, Reporting and recordkeeping requirements.

Accordingly, the Federal Housing Finance Board hereby amends title 12, chapter IX, part 902 of the Code of Federal Regulations as follows:

PART 902—OPERATIONS

1. Revise the authority citation for part 902 to read as follows:

Authority: 12 U.S.C. 1422b and 1438(b).

2. Revise § 902.2 to read as follows:

§ 902.2 Assessments on the Banks.

(a) *Assessment authority.* The Finance Board may impose a semiannual assessment on the Banks in an aggregate amount the Finance Board determines is sufficient to provide for the payment of its estimated expenses for the period for which it makes such assessment.

(b) *Assessment procedure.* (1) At or near the end of each fiscal year, the Finance Board shall approve an annual budget of Finance Board expenses for the next fiscal year. The Finance Board shall promptly provide a copy of the approved budget to each Bank president.

(2) The Finance Board shall assess the Banks semiannually in an aggregate amount it determines is sufficient to pay the expenses approved under paragraph (b)(1) of this section. The Finance Board shall offset the amount of the semiannual assessments it imposes on the Banks by any amount it determines is remaining from previous semiannual assessments. The Finance Board shall promptly notify each Bank president in writing of the amount of any assessment.

(3) Each Bank shall pay a *pro rata* share of the semiannual assessments imposed under paragraph (b)(2) of this section. The Finance Board shall calculate each Bank's *pro rata* share based on the ratio between the total paid-in value of the Bank's capital stock and the aggregate total paid-in value of the capital stock of every Bank. The Finance Board shall promptly notify each Bank in writing of the amount of its *pro rata* share of any semiannual assessment.

(4) Unless otherwise instructed in writing by the Finance Board, each Bank shall pay to the Finance Board its *pro rata* share of an assessment in equal monthly installments during the semiannual period covered by the assessment.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairperson.

[FR Doc. 97–17446 Filed 7–2–97; 8:45 am]

BILLING CODE 6725–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–17–AD; Amendment 39–10066, AD 97–14–08]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Model G–159 (G–I) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Gulfstream Model G–159 (G–I) airplanes, that currently requires repetitive inspections to detect cracks and loose rivets in the forward brackets for the main landing gear (MLG) uplock beam assembly, and replacement of the brackets, if necessary. This amendment requires installation of redesigned brackets that preclude the potential for cracking and loose rivets, when accomplished, this installation constitutes terminating action for the currently required inspections. This amendment is prompted by the development of an installation that will positively address the identified unsafe condition. The actions specified by this AD are intended to prevent failure of the bracket for the MLG uplock beam assembly due to cracking and loose rivets; such failure could result in the inability to retract the MLG.

DATES: Effective August 7, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 7, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Gulfstream Aerospace Corporation, Technical Operations Department, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–2206. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 66–10–03, amendment 39–222 (31 FR 5660, April 12, 1966), which is applicable to certain Gulfstream Model G–159 (G–I) airplanes, was published in the **Federal Register** on March 6, 1997 (62 FR 10237). The action proposed to require repetitive dye penetrant and visual inspections to detect cracks and loose rivets in the forward brackets of the main landing gear (MLG) uplock beam assembly, and replacement of the brackets, if necessary. It also proposed to require that the currently-installed brackets be replaced with improved brackets. Once this replacement is accomplished, the previously required inspections may be terminated.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 146 Gulfstream Model G–159 airplanes of the affected design in the worldwide fleet. The FAA estimates that 72 airplanes of U.S. registry will be affected by this AD.

The inspections that are currently required by AD 66–10–03 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $8,640, or $120 per airplane, per inspection.

The terminating replacement that is required by this AD action will take approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $425 per airplane. Based on these figures, the cost impact of the requirements of this AD on U.S. operators is estimated to be $82,440, or $1,145 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that his final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the rules docket. A copy of it may be obtained from the rules docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–222 (31 FR 5660, April 12, 1966), and by adding a

new airworthiness directive (AD), amendment 39–10066, to read as follows:

97–14–08 Gulfstream Aerospace Corporation (formerly Grumman): Amendment 39–10066. Docket 97–NM–17–AD. Supersedes AD 66–10–03, Amendment 39–222.

Applicability: Model G–159 (G–I) airplanes; serial number (S/N) 1 through 12 inclusive, 14 through 83 inclusive, and 114; on which main landing gear (MLG) uplock beam support brackets (angles) having part numbers (P/N) 159W10150–71 and –72 are *not* installed; confiscated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the brackets for the main landing gear (MLG) uplock beam assembly due to cracking and loose rivets, which could result in the inability to retract the MLG, accomplish the following:

(a) Within 50 hours time-in-service after April 12, 1966 (the effective date of AD 66–10–03, amendment 39–222), and thereafter at intervals not to exceed 100 hours time-in-service, accomplish the actions specified in paragraphs (a)(1) and (a)(2) of this AD in accordance with Grumman Gulfstream Service Change No. 179, dated March 15, 1966:

(1) Conduct a dye penetrant inspection, in conjunction with at least a 10X magnifying glass, to detect cracks in the MLG uplock beam forward brackets, P/N's 159W10150–51 and –52; and

(2) Conduct a visual inspection of the attachments of each bracket to the firewall bulkhead and to the main gear uplock beam for loose rivets caused by elongated rivet holes.

(b) If any crack or loose rivet is found during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish either paragraph (b)(1) or (b)(2) of this AD, in accordance with Grumman Gulfstream Service Change No. 179, dated March 15, 1966:

Note 2: Grumman Gulfstream Service Change No. 179A, dated March 20, 1966, contains additional procedural information relevant to the inspection and replacement requirements of this AD.

(1) Replace the bracket with a new or serviceable bracket having P/N 159W10150–51 or –52, as applicable. After this replacement, continue to inspect in accordance with paragraph (a) of this AD. Or

(2) Replace the bracket with a bracket having P/N 159W10150–71 or –72, as applicable. This replacement constitutes terminating action for the inspection required by paragraph (a) of this AD for the replaced bracket.

(c) Within 1,000 hours time-in-service after the effective date of this AD, replace the brackets for the main landing gear (MLG) uplock beam assembly with brackets having P/N 159W10150–71 and –72, in accordance with Part II of Grumman Gulfstream Service Change No. 179, dated March 15, 1966. Such replacement constitutes terminating action for the inspections required by this AD.

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager Atlanta ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 66–10–03, amendment 39–222, are approved as alternative methods of compliance with this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with Grumman Gulfstream Service Change No. 179, dated March 15, 1966. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Gulfstream Aerospace Corporation, Technical Operations Department, P.O. Box 2206, MS D–10, Savannah, Georgia 31402–2206. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(g) This amendment becomes effective on August 7, 1977.

Issued in Renton, Washington, on June 26, 1997.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–17279 Filed 7–2–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–06–AD; Amendment 39–10065, AD 97–14–07]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model L–1011 Series Airplanes Equipped With Rolls-Royce Model RB211–524 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Lockheed Model L–1011 series airplanes, that currently requires several modifications of the engine high speed gearboxes. This amendment requires that a new modification be installed in lieu of one of those previously required. This amendment is prompted by a report indicating that one of the currently required modifications is not completely effective because it can create interference problems between the fireloop and a fuel line. The actions specified by this AD are intended to reduce the possibility of a fire in the high speed gear boxes, and to ensure that any fire which may occur is readily detected by the flight crew.

DATES: Effective August 7, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 7, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080; and Rolls-Royce plc, Technical Publications Department, P.O. Box 17, Parkside, Coventry CV1 2LZ, England. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE–

116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7367; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 94–03–10, amendment 39–8817 (59 FR 6535, February 11, 1994), which is applicable to certain Lockheed Model L–1011 series airplanes, was published in the **Federal Register** on March 26, 1997 (62 FR 14363). The action proposed to continue to require installation of a new vent tube in the high speed gearbox on the number 1, 2, and 3 engines, and modification of the breather duct of the high speed gearbox on the number 2 engine. The action also proposed to continue to require the installation of an additional fire detection system on the high speed gearbox on the number 1, 2, and 3 engines; however, it would require that the installation be accomplished in accordance with the revised service bulletin, described previously, which incorporates the new routing procedures. This proposed requirement would mean that operators who already have complied with the installation required by AD 94–03–10 must perform additional procedures relative to rerouting the installation assembly.

Explanation of Changes Made to the Proposal

The FAA has revised NOTE 2 and NOTE 3 of the proposed AD to reference the exact effective date (i.e., March 14, 1994) of AD 94–03–10. The FAA finds that the phrase ''prior to the effective date of this AD,'' which appeared in the proposal, could be misinterpreted to mean the effective date of this final rule rather than the effective date of AD 94–03–10.

Consideration of Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 92 Lockheed Model L–1011 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 28 airplanes of U.S. registry will be affected by this AD.

The installation of a new vent tube in the high speed gear box, which is currently required by AD 94–03–10, takes approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts are estimated to cost $500 per airplane. Based on these figures, the cost impact of this action on U.S. operators is estimated to be $19,040, or $680 per airplane.

The modification of the breather duct on the high speed gearbox on the number 2 engine, which is currently required by AD 94–03–10, requires approximately 6 work hours to accomplish, at an average labor rate of $60 per work hour. Required parts are estimated to cost $10,000 per airplane. Based on these figures, the cost impact of this action on U.S. operators is estimated to be $290,080, or $10,360 per airplane.

The installation of the additional fire detecting loop in accordance with the revised Lockheed service bulletin will require approximately 9 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. If the airplane is equipped with a Walter Kidde fire detection system, required parts are estimated to cost $2,100 per airplane. If the airplane is equipped with a Graviner fire detection system, required parts are estimated to cost $8,100 per airplane. Based on these figures, the cost impact of this requirement on U.S. operators is estimated to be between $73,920 and $241,920 for the fleet, or between $2,640 and $8,640 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that at least 19 airplanes of U.S. registry already have been modified to incorporate the breather duct on the high speed gearbox on the number 2 engine. Therefore, the future cost impact of this AD is reduced by at least $196,840.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the rules docket. A copy of it may be obtained from the rules docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation Safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8817 (59 FR 6535, February 11, 1994), and by adding a new airworthiness directive (AD), amendment 39–10065, to read as follows:

97–14–07 Lockheed: Amendment 39–10065. Docket 97–NM–06–AD. Supersedes AD 94–03–10, Amendment 39–8817.

Applicability: Model L–1011 series airplanes, equipped with Rolls-Royce Model RB211–524 series engines; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD.

The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To reduce the possibility of a fire in the engine high speed gearbox, and to ensure that, if a fire occurs, it is readily detected by the flight crew, accomplish the following:

(a) Within 16,000 flight hours or 48 months after March 14, 1994, (the effective date of AD 94–03–10, amendment 39–8817), whichever occurs first, accomplish both paragraphs (a)(1) and (a)(2) of this AD:

(1) Install a new vent tube in the gear compartment of the high speed gearbox on the number 1, number 2, and number 3 engines, in accordance with Rolls-Royce Service Bulletin RB.211–72–4666, Revision 4, dated May 16, 1986.

Note 2: Installation of a new vent tube prior to March 14, 1994, in accordance with Rolls-Royce Service Bulletin RB.211–72–4666, Revision 3, dated October 14, 1977, is considered acceptable for compliance with this AD.

(2) Modify the breather duct of the high speed gearbox on the number 2 engine in accordance with Lockheed Service Bulletin 093–71–067, Revision 2, dated December 12, 1988.

Note 3: Modification of the breather duct prior to March 14, 1994, in accordance with Lockheed Service Bulletin 093–71–067, Revision 1, dated April 1, 1986, is considered acceptable for compliance with this AD.

(b) Install an additional fire detection system on the high speed gearbox on the number 1, number 2, and number 3 engines in accordance with paragraph (b)(1), (b)(2), (b)(3) of this AD, as applicable:

(1) For airplanes on which an additional fire detection system has not been installed: Within 6,000 flight hours or 18 months after the effective date of this AD, whichever occurs first, install the system in accordance with Lockheed Service Bulletin 093–26–039, Revision 1, dated April 10, 1996.

(2) For airplanes on which an additional fire detection system has been installed prior to the effective date of this AD and in accordance with Lockheed Service Bulletin 093–26–039, dated November 11, 1992: Within 6,000 flight hours or 18 months after the effective date of this AD, whichever occurs first, modify the system in accordance with Lockheed Service Bulletin 093–26–039, Revision 1, dated April 10, 1996.

(3) For airplanes on which an additional fire detection system has been installed prior to the effective date of this AD and in accordance with Lockheed Service Bulletin 093–26–039, Revision 1, dated April 10, 1996: No further action is required by this paragraph.

(c)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note: 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 94–03–10, amendment 39–8817, are approved as alternative methods of compliance with this AD.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with Rolls-Royce Service Bulletin RB.211–72–4666, Revision 4, dated May 16, 1986; Lockheed Service Bulletin 093–71–067, Revision 2, dated December 12, 1988; and Lockheed Service Bulletin 093–26–039, Revision 1, dated April 10, 1996. Rolls-Royce Service Bulletin RB.211–72–4666, Revision 4, dated May 16, 1986, contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–4	4	May 16, 1986.
4A, 6A, 10	none	August 26, 1977.
5, 6, 7–9, Supplement Page 2.	2	August 26, 1977.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080; and Rolls-Royce plc, Technical Publications Department, P.O. Box 17, Parkside, Coventry CV1 2LZ, England. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(f) This amendment becomes effective on August 7, 1997.

Issued in Renton, Washington, on June 26, 1997.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–17278 Filed 7–2–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–94–AD; Amendment 39–10064; AD 97–14–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes, Excluding Airplanes Equipped With Pratt & Whitney PW4000 and General Electric CF6–80C2 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing 747 series airplanes, that currently requires replacement of certain fuse pins on the upper link of the inboard and outboard struts. That AD also requires inspections to detect corrosion or cracks of certain fuse pins, and replacement, if necessary. This amendment reduces the compliance times of actions associated with certain fuse pins and provides for optional terminating action for the requirements of this AD. This amendment is prompted by a report of fracturing of a bulkhead style fuse pin located in the inboard strut at the forward end of the upper link. The actions specified in this AD are intended to prevent failure of the strut and separation of an engine from the airplane due to fracturing of the fuse pins.

DATES: Effective July 18, 1997.

The incorporation by reference of Boeing Alert Service Bulletin 747–54A2166, dated May 1, 1997, as listed in the regulations, is approved by the Director of the Federal Register as of July 18, 1997.

The incorporation by reference of Boeing Alert Service Bulletin 747–54A2166, dated April 28, 1994, as listed in the regulations, was approved previously by the Director of the Federal Register as of April 13, 1995 (60 FR 13618, March 14, 1995).

Comments for inclusion in the Rules Docket must be received on or before September 2, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–94–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing

Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamara L. Dow, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone, (425) 227–2771; fax, (425) 227–1181.

SUPPLEMENTARY INFORMATION: On March 3, 1995, the FAA issued AD 95–06–02, amendment 39–9172 (60 FR 13618, March 14, 1995), to require replacement of certain fuse pins on the upper link of the inboard and outboard struts. That AD also currently requires inspections to detect corrosion or cracks of certain fuse pins, and replacement, if necessary. [A correction of the rule was published in the **Federal Register** on April 19, 1995 (60 FR 19492).] That action was prompted by reports of cracked or corroded fuse pins on the upper link of the inboard and outboard struts, which could result in fracturing of the pins.

Actions Since Issuance of Previous Rule

Since the issuance of AD 95–06–02, the FAA received a report indicating that a fracture of a bulkhead style fuse pin located in the inboard strut at the forward end of the upper link had occurred on a Boeing Model 747 series airplane. The bulkhead style fuse pin had accumulated 7,750 flight cycles and 42,027 flight hours. Metallurgical analysis of this pin indicated that the cause of the cracking was fatigue. Fracturing of the fuse pins, if not corrected, could result in failure of the strut and separation of an engine from the airplane.

Explanation of Relevant Service Information

Since the issuance of the previous rule, the FAA has reviewed and approved Boeing Alert Service Bulletin 747–54A2166, Revision 1, dated May 1, 1997, which reduces the recommended times for actions associated with certain fuse pins. The alert service bulletin references Boeing Alert Service Bulletins 747–54A2157, 747–54A2158, and 747–54A2159, which describe procedures for modification of the strut/wing. The alert service bulletin also references Boeing Service Bulletin 747–54–2155, which describes procedures for installation of 15–5 corrosion resistant steel (third generation) fuse pins in the forward and aft positions of the upper link on the inboard or outboard strut. Accomplishment of either the strut/wing modification or installation of 15–5 fuse pins eliminates the need for additional inspections or replacement of fuse pins.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 95–06–02 to continue to require replacement of certain fuse pins on the upper link of the inboard and outboard struts. This AD also continues to require inspections to detect corrosion or cracks of certain fuse pins, and replacement, if necessary. This amendment reduces the compliance times of actions associated with certain bulkhead fuse pins. This amendment also provides for optional terminating action for the requirements of this AD.

This is considered to be interim action. The FAA may consider further rulemaking action to require the accomplishment of the optional terminating action [installation of 15–5 corrosion resistant steel (third generation) fuse pins] currently specified in this AD. However, the proposed compliance time for accomplishment of that action is sufficiently long so that prior notice and time for public comment will be practicable.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–94–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the

Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9172 (60 FR 13618, March 14, 1995), and by adding a new airworthiness directive (AD), amendment 39–10064, to read as follows:

97–14–06 Boeing: Amendment 39–10064. Docket 97–NM–94–AD. Supersedes AD 95–06–02, Amendment 39–9172.

Applicability: Model 747 and 747–400 series airplanes, line numbers 1 through 967 inclusive, and 969 through 992 inclusive; certificated in any category; excluding airplanes equipped with Pratt & Whitney PW4000 or General Electric CF6–80C2 series engines; and excluding airplanes on which the strut/wing modification has been accomplished in accordance with AD 95–13–05, amendment 39–9285, AD 95–13–07, amendment 39–9287; or AD 95–10–16, amendment 39–9233.

Note 1: This AD does not require that the actions be accomplished on those airplanes having pylons on which 15–5 corrosion resistant steel (third generation) fuse pins are installed through the upper link of the inboard and outboard struts.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been otherwise modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the strut and loss of an engine due to corrosion or cracking of the fuse pins, accomplish the following:

(a) For airplanes having bottle bore style fuse pins in the forward position on the upper link: Replace any bottle bore style fuse pin with a new bulkhead style fuse pin in the forward position, or with 15–5 corrosion resistant steel (third generation) fuse pins in the forward position, in accordance with Boeing Alert Service Bulletin 747–54A2166, dated April 28, 1994, or Revision 1, dated May 1, 1997, at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Prior to the accumulation of 5,000 total landings on the fuse pin, or within 5 years since installation of the pin, whichever occurs first. Or

(2) Within 6 months after April 13, 1995 (the effective date of AD 95–06–02, amendment 39–9172).

Note 3: Third generation fuse pins are installed in pairs (in the forward and aft positions). Therefore, replacement of an individual upper link fuse pin in the forward position with a third generation pin also would necessitate replacement of the pin in the aft position.

Note 4: The alert service bulletin references Boeing Service Bulletin 747–54–2155, dated September 23, 1993, as an additional source of service information for replacement of the fuse pins with 15–5 corrosion resistant steel (third generation) fuse pins. Installation of these third generation fuse pins is preferred over installation of bulkhead style fuse pins.

(b) For airplanes having bulkhead style fuse pins in the forward position on the upper link: Perform a detailed visual inspection to detect corrosion of the pins, and a magnetic particle inspection to detect cracks, in accordance with Boeing Alert Service Bulletin 747–54A2166, dated April 28, 1994, or Revision 1, dated May 1, 1997, at the earlier of the times specified in paragraphs (b)(1) and (b)(2) of this AD.

(1) Perform the inspections at the later of the times specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this AD.

(i) Prior to the accumulation of 8,000 total landings on the fuse pin, or within 8 years since installation of the pin, whichever occurs first. Or

(ii) Within 12 months after April 13, 1995.

(2) Perform the inspections at the later of the times specified in paragraphs (b)(2)(i) and (b)(2)(ii) of this AD.

(i) Prior to the accumulation of 5,000 total landings on the fuse pin, or within 5 years since installation of the pin, whichever occurs first. Or

(ii) Within 90 days after the effective date of this AD.

(c) For the inboard and outboard struts on airplanes other than those identified in paragraph (d) of this AD: If no corrosion or crack is found during the inspection required by paragraph (b) of this AD, repeat the inspection thereafter, in accordance with Boeing Alert Service Bulletin 747–54A2166, dated April 28, 1994, or Revision 1, dated May 1, 1997, at the time specified in paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) For airplanes on which the initial inspection required by paragraph (a) or (b) of AD 95–06–02 has been accomplished prior to the effective date of this AD: Repeat the inspection within 1,000 landings since the last inspection in accordance with AD 95–06–02, or within 500 landings after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 500 landings.

(2) For airplanes other than those identified in paragraph (c)(1) of this AD: Repeat the inspection thereafter at intervals not to exceed 500 landings.

(d) For the outboard struts on airplanes equipped with Rolls-Royce RB211–524G or –524H series engines: If no corrosion or crack is found during the inspection required by paragraph (b) of this AD, repeat the inspection thereafter in accordance with Boeing Alert Service Bulletin 747–54A2166, dated April 28, 1994, or Revision 1, dated May 1, 1997, at the time specified in paragraph (d)(1) or (d)(2) of this AD, as applicable.

(1) For airplanes on which the initial inspection required by paragraph (a) or (b) of AD 95–06–02 has been accomplished prior to the effective date of this AD: Repeat the inspection within 2,000 landings since the last inspection in accordance with AD 95–06–02, or within 1,000 landings after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 500 landings.

(2) For airplanes other than those identified in paragraph (d)(1) of this AD: Repeat the inspection thereafter at intervals not to exceed 500 landings.

Note 5: The outboard struts of airplanes equipped with Rolls-Royce RB211–524G or –524H series engines are equipped with thick wall ''4330 steel'' bulkhead style fuse pins in the forward position of the upper link. Crack propagation to critical length in these thick wall pins is slower than for pins installed on the struts of airplanes equipped with engines other than the Rolls-Royce RB211–524G or –524H series.

(e) If any corrosion or crack is found during any inspection required by this AD, prior to further flight, replace the corroded or cracked pin with either a new bulkhead style fuse pin in the forward position of the upper link, or with 15–5 corrosion resistant steel (third generation) fuse pins in the forward and aft positions of the upper link; in accordance with Boeing Alert Service Bulletin 747–54A2166, dated April 28, 1994, or Revision 1, dated May 1, 1997. Accomplish inspections, if applicable, as specified in paragraph (e)(1) or (e)(2).

(1) If the corroded or cracked fuse pin is replaced with a new bulkhead style fuse pin, prior to the accumulation of 5,000 total landings on the new pin, or within 5 years since installation of the new pin, whichever occurs first, perform a detailed visual inspection to detect corrosion of the new pin, and a magnetic particle inspection to detect cracks of the new pin, in accordance with the alert service bulletin. Repeat these inspections thereafter at the interval specified in paragraph (e)(1)(i) or (e)(1)(ii) of this AD, as applicable.

(i) For the inboard and outboard struts on airplanes other than those identified in paragraph (e)(1)(ii) of this AD: Repeat the inspections at intervals not to exceed 500 landings.

(ii) For the outboard struts on airplanes equipped with Rolls-Royce RB211–524G or –524H series engines: Repeat the inspections at intervals not to exceed 1,000 landings.

(2) If the corroded or cracked fuse pin is replaced with a 15–5 corrosion resistant steel (third generation) fuse pin, no further action is required by this AD.

(f) Accomplishment of the strut/wing modification in accordance with Boeing Alert Service Bulletin 747–54A2166, Revision 1, dated May 1, 1997, constitutes terminating action for the requirements of this AD.

Note 6: Boeing Alert Service Bulletin 747–54A2166, Revision 1, references Boeing Alert Service Bulletins 747–54A2157, 747–54A2158, and 747–54A2159 as additional sources of service information for accomplishment of the strut/wing modification.

(g) Installation of 15–5 corrosion resistant steel (third generation) fuse pins in the forward and aft positions of the upper link on the inboard or outboard strut in accordance with Boeing Alert Service Bulletin 747–54A2166, Revision 1, dated May 1, 1997, constitutes terminating action for the requirements of this AD.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(j) The actions shall be done in accordance with Boeing Alert Service Bulletin 747–54A2166, dated April 28, 1994, or Revision 1, dated May 1, 1997. The incorporation by reference of Boeing Alert Service Bulletin 747–54A2166, dated April 28, 1994, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of April 13, 1995 (60 FR 13618, March 14, 1995). The incorporation by reference of Boeing Alert Service Bulletin 747–54A2166, Revision 1, dated May 1, 1997, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(k) This amendment becomes effective on July 18, 1997.

Issued in Renton, Washington, on June 26, 1997.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–17284 Filed 7–2–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–15–AD; Amendment 39–10067; AD 97–14–09]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Model G–159 (G–I) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Gulfstream Model G–159 (G–I) airplanes, that currently requires repetitive inspections to detect cracking in the mounting lugs of the elevator trim tab actuators, and replacement, if necessary. This amendment requires the installation of improved elevator trim tab actuators that are not susceptible to the subject cracking. This amendment is prompted by the development of a modification that positively addresses the identified unsafe condition. The actions specified by this AD are intended to prevent failure of the mounting lugs on the elevator trim tab actuator due to cracking; such failure could result in severe vibration during flight and/or reduction or loss of elevator trim tab capability, which could lead to reduced controllability of the airplane.

DATES: Effective August 7, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 7, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Gulfstream Aerospace Corporation, Technical Operations Department, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–2206. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 72–24–04, amendment 39–1559 (37 FR 24419, November 17, 1972), which is applicable to certain Gulfstream Model G–159 (G–I) airplanes, was published in the **Federal Register** on March 6, 1997 (62 FR 10231). The action proposed to continue to require repetitive dye penetrant inspections for cracks in the elevator trim tab actuator mounting lugs, and replacement, if necessary. It also proposed to require the installation of improved elevator trim tab actuators, which would constitute terminating action for the repetitive inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 146 Gulfstream Model G–159 airplanes of the affected design in the worldwide fleet. The FAA estimates that 72 airplanes of U.S. registry will be affected by this proposed AD.

The inspections that are currently required by AD 72–24–04 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $8,640, or $120 per airplane, per inspection.

The new installation that is required by this AD action will take approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $4,900 per airplane. Based on these figures, the cost impact of the required requirements of this AD on U.S. operators is estimated to be $404,640, or $5,620 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–1559 (37 FR 24419, November 17, 1972), and by adding a new airworthiness directive (AD), amendment 39–10067, to read as follows:

97–14–09 Gulfstream Aerospace Corporation (previously Grumman): Amendment 39–10067. Docket 97–NM–15–A Supersedes AD 72–24–04, Amendment 39–1559.

Applicability: Model G–159 (G–I) airplanes, on which elevator trim tab actuators having part number 159SCC100–11 are *not* installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the elevator trim tab mounting lugs due to cracking, which could result in severe vibration during flight and a consequent reduction or loss of elevator trim tab capability, accomplish the following:

(a) Within 10 hours time-in-service after November 24, 1972 (the effective date of AD 72–24–04, amendment 39–1559), perform an inspection to detect cracks in the mounting lugs of the elevator trim tab actuators, having part number (P/N) 159SCC100–1 or –5; and shim to correct any out-of-plane condition, in accordance with Gulfstream Customer Bulletin No. 208A, dated November 18, 1971; Amendment 1, dated January 18, 1972; Amendment 2, dated April 21, 1972; and Gulfstream Operational Summary 72–5B, dated August 1972.

(b) If no crack is found in any mounting lug during the inspection required by paragraph (a) of this AD, repeat the inspection at intervals not to exceed 200 hours time-in-service.

(c) If any crack is found in a mounting lug when conducting any inspection required by paragraph (a) or (b) of this AD, prior to further flight, replace the elevator trim tab actuator with a new or serviceable actuator having P/N 159SCC100–1, –5, or –11.

(1) If an actuator having P/N 159SCC100–1 or –5 is used as the replacement unit, repeat the inspection for cracks specified in paragraph (a) of this AD thereafter at intervals not to exceed 200 hours time-in-service.

(2) If an actuator having P/N 159SCC100–11 is used as the replacement unit, no further inspection action is required for that unit in accordance with this AD.

(d) Within 1,000 hours time-in-service after the effective date of this AD, replace the elevator trim tab actuators with actuators that have P/N 159SCC100–11, in accordance with Gulfstream Aircraft Service Change No. 191, dated August 18, 1972. This installation constitutes terminating action for the inspections required by this AD.

(e)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 72–24–02, amendment 39-1559, are approved as alternative methods of compliance with this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The actions shall be done in accordance with Gulfstream Customer Bulletin No. 208A, dated November 18, 1971; Gulfstream Customer Bulletin No. 208A, Amendment 1, dated January 18, 1972; Gulfstream Customer Bulletin No. 208A, Amendment 2, dated April 21, 1972; Gulfstream Operational Summary 72–5B, dated August 1972; or Gulfstream Aircraft Service Change No. 191, dated August 18, 1972. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Gulfstream Aerospace Corporation, Technical Operations Department, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–2206. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on August 7, 1997.

Issued in Renton, Washington, on June 26, 1997.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–17282 Filed 7–2–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–16–AD; Amendment 39–10068; AD 97–14–10]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Model G–159 (G-I) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Gulfstream Model G–159 (G-I) airplanes, that currently requires modification and repetitive

inspections for cracks in the main landing gear (MLG) retract cylinder attachment fittings. This amendment requires installation of improved attachment fittings which, when accomplished, terminates the requirement for the repetitive inspections. This amendment is prompted by the development of a modification that positively addresses the identified unsafe condition. The actions specified by this AD are intended to prevent failure of the MLG retract cylinder attachment fitting due to fatigue cracking. This condition, if not corrected, could result in the inability to retract the MLG.

DATES: Effective August 7, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 7, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Gulfstream Aerospace Corporation, Technical Operations Department, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–2206. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2-160, College Park, Georgia 30337–2748; telephone (404) 305-7362; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 67–31–08, amendment 39–515 (32 FR 16201, November 28, 1967), which is applicable to certain Gulfstream Model G–159 (G–I) airplanes, was published in the **Federal Register** on March 6, 1997 (62 FR 10228). The action proposed to supersede AD 67–31–08 to continue to require repetitive inspections and modification of the MLG retract cylinder attachment fittings, and replacement, if necessary. It also proposed to require that the attachment fitting assemblies eventually be replaced with assemblies made of steel. Once this replacement is accomplished, the previously required modification and inspections may be terminated.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 146 Gulfstream Model G–159 (G–I) airplanes of the affected design in the worldwide fleet. The FAA estimates that 72 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 67–31–08 take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $12,960, or $180 per airplane, per inspection.

The replacement action that is required by this AD action will take approximately 45 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $5,400 per airplane. Based on these figures, the cost impact of the requirements of this AD on U.S. operators is estimated to be $583,200, or $8,100 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–515 (32 FR 16201, November 28, 1967), and by adding a new airworthiness directive (AD), amendment 39–10068, to read as follows:

97–14–10 Gulfstream Aerospace Corporation (formerly Grumman): Amendment 39–10068. Docket 97–NM–16–AD. Supersedes AD 67–31–08, Amendment 39–515.

Applicability: Model G–159 (G–I) airplanes; serial numbers (S/N) 1 through 12 inclusive, 14 through 112 inclusive, 114 through 148 inclusive, 322, and 323; on which main landing gear cylinder attach fitting assemblies having part number (P/N) 159WM10276–1 and –2 and balls having P/N 159WM10277–1 are *not* installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main landing gear (MLG) retract cylinder attachment fittings due to fatigue cracking, which could result in the inability to retract the MLG, accomplish the following:

(a) Accomplish the actions specified in paragraphs (a)(1) and (a)(2) of this AD, at the times indicated in those paragraphs and in accordance with Grumman Gulfstream Customer Bulletin No. 172, dated September 6, 1963.

(1) Beginning November 7, 1967 (the effective date of AD 67–31–08, amendment 39–515), and prior to each flight, conduct a visual inspection to detect cracks in the MLG retract cylinder attachment fittings on the lower surface of the right-hand and left-hand wings in the vicinity of the aft end of the fitting.

(2) Within 25 hours time-in-service after November 7, 1967, accomplish the actions specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD:

(i) Conduct a dye penetrant inspection, in conjunction with at least a 10X magnifying glass, to detect cracks in the MLG retract cylinder attachment fittings on the lower surface of the right-hand and left-hand wings in the vicinity of the aft end of the fitting. Repeat this inspection thereafter at intervals not to exceed 25 hours time-in-service. And

(ii) Modify the aft end edges of the fitting by rounding them off to approximately 1/32″ radius.

(b) If any crack is found during an inspection required by paragraph (a) of this AD, prior to further flight, accomplish either paragraph (b)(1) or (b)(2) of this AD:

(1) Replace the cracked part with a part of the same part number that has been modified and inspected in accordance with paragraph (a) of this AD, in accordance with Grumman Gulfstream Customer Bulletin No. 172, dated September 6, 1963. Thereafter, continue the inspections required by paragraph (a) of this AD. Or

(2) Replace the fitting assembly with an assembly having part number (P/N) 159WM10276–1 or –2, and balls having P/N 159WM10277–1. After accomplishing this replacement, the repetitive inspections of that fitting required by paragraph (a) of this AD may be terminated.

(c) Within 400 hours time-in-service after the effective date of this AD, replace the MLG retract cylinder attachment fitting assemblies with assemblies having part numbers (P/N) 159WM10276–1 and –2, and balls having P/N 159WM10277–1. This replacement constitutes terminating action for the inspection requirements of this AD.

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 67–31–08, amendment 39–515, are approved as alternative methods of compliance with this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with Gulfstream Customer Bulletin No. 172, dated September 6, 1963. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Gulfstream Aerospace Corporation, Technical Operations Department, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–2206. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on August 7, 1997.

Issued in Renton, Washington, on June 26, 1997.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–17283 Filed 7–2–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–36–AD; Amendment 39–10062; AD 97–13–02]

RIN 2120–AA64

Airworthiness Directives; Diamond Aircraft Industries, Inc. Model DA 20–A1 Airplanes, Serial Numbers 10002 Through 10287

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 97–13–02, which was sent previously to all known U.S. owners and operators of Diamond Aircraft Industries, Inc. (Diamond) Model DA 20–A1 airplanes. This AD requires fabricating and installing a placard and inserting limitations into the airplane's flight manual limitations section prohibiting spin maneuvers until a modification is installed. This AD results from an occurrence where a pilot's shoe jammed between the rudder control pedal and the firewall during a spin recovery in a Canadian registered HOAC-Austria Model DV 20 KATANA airplane. The actions specified by this AD are intended to prevent the pilot's shoe from becoming jammed between the rudder pedal and firewall which could result in loss of control of the airplane.

DATES: Effective July 14 1997, to all persons except those to whom it was made immediately effective by priority letter AD 97–13–02, issued June 12, 1997, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 14, 1997.

Comments for inclusion in the Rules Docket must be received on or before August 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 97–CE–36–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Diamond Aircraft Industries, Inc., 1560 Crumlin Sideroad, London, Ontario, Canada N5V 1S2; telephone (519) 457–4041; facsimile (519) 457–4045. This information may also be examined at the Rules Docket at the address above, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gregory J. Michalik, Senior Aerospace Engineer, Chicago Aircraft Certification Office, 2300 East Devon Ave., Des Plaines, Illinois 60018, telephone (847) 294–7135; facsimile (847) 294–7834

SUPPLEMENTARY INFORMATION:

Discussion

On June 12, 1997, the FAA issued priority letter AD 97–13–02, which applies to Diamond Model DA 20–A1 airplanes. That AD resulted from an occurrence where a pilot's shoe jammed between the rudder control pedal and the firewall during a spin recovery in a Canadian registered HOAC-Austria Model DV 20 KATANA airplane. Investigation of the occurrence by Transport Canada, which is the airworthiness authority for Canada, revealed that the pilot's shoe caught on the head of a screw protruding from the firewall just above the rudder control pedals. There are two screws in this area

that secure the battery box to the firewall.

Further examination of the design of the HOAC-Austria Model DV 20 KATANA airplane indicates that the potential for jamming of a pilot's shoe between the rudder pedal and the firewall also exists for Diamond Model DA 20–A1 airplanes. The Model DV 20 KATANA is manufactured in Austria, and is of similar design to the Model DA 20–A1 which is manufactured in Canada. The situation can develop when aggressive full rudder is applied such as in a spin entry, with simultaneous placement of the pilot's feet high on the toe brakes. The pilot's shoe can become jammed between the rudder pedal and firewall which could result in loss of control of the airplane.

Relevant Service Information

Diamond Aircraft has issued Alert Service Bulletin No. DA 20–53–01A, which specifies procedures for modifying the rudder control pedal area with skid plates and countersunk screws to preclude the pilot's shoe from catching on the battery box mounting screws and thus restricting the movement of the rudder pedals.

In order to assure the continued airworthiness of these airplanes in Canada, Transport Canada has classified this service bulletin as mandatory and issued Canadian AD No. CF–97–09, applicable to Diamond Model DA 20–A1 airplanes, which requires fabricating and installing a placard and inserting limitations into the airplane's flight manual limitations (AFM) section prohibiting spin maneuvers until the above modification is installed.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above.

The FAA's Determination and Explanation of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other Diamond Model DA 20–A1 airplanes of the same type design, the FAA issued priority letter AD 97–13–02 to prevent the pilot's shoe from jamming between the rudder pedal and firewall which could result in loss of control of the airplane. The AD requires fabricating and installing a placard (with ⅛-inch letters) in the clear view of the pilot that reads: ''SPINS PROHIBITED'', and amending the airplane flight manual (AFM) limitations section to indicate that spinning is not permitted.

The placard fabrication and AFM insertion can be accomplished by an owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7).

In addition, this AD requires accomplishing a modification to the rudder control pedal area with skid plates and countersunk screws at which time the AFM limitation and the placard can be removed. The modification is to be done in accordance with the instructions in Diamond Alert Service Bulletin No. DA 20–53–01A, Rev. 0, dated June 5, 1997.

Determination of the Effective Date of the AD

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on June 12, 1997 to all known U.S. operators of Diamond Model DA 20–A1 airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–13–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–13–02 Diamond Aircraft Industries, Inc.: Amendment 39–10062; Docket 97–CE–36–AD.

Applicability: Model DA 20–A1 airplanes, serial numbers 10002 through 10287, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished, except to those operators receiving this action by priority letter issued June 12, 1997, which made these actions effective immediately upon receipt.

To prevent the pilot's shoe from becoming jammed between the rudder pedal and firewall which could result in loss of control of the airplane, accomplish the following:

(a) Prior to further flight after the effective date of this AD, fabricate a placard in ⅛-inch letters with the words ''SPINS PROHIBITED'', and install this placard in the airplane cabin within the pilot's clear view.

(b) Prior to further flight after the effective date of this AD, insert a copy of this priority letter AD into the limitations section of the Airplane Flight Manual (AFM).

(c) Fabricating and installing the placard and inserting a copy of this AD into the AFM limitations section may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the airplane's records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations.

(d) Within the next 30 days after the effective date of this AD, modify the rudder control pedal area in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Diamond Alert Service Bulletin No. DA20–53–01A, Rev. 0, dated June 5, 1997.

(e) Accomplishing the modification in paragraph (d) of this AD eliminates the need for the placard and AFM limitations requirements specified in paragraphs (a) and (b) of this AD.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Chicago Aircraft Certification Office, 2300 East Devon Ave., Des Plaines, Illinois 60018. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager Chicago Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from Chicago Aircraft Certification Office.

(h) The modification required by this AD shall be done in accordance with Diamond Aircraft Alert Service Bulletin No. DA20–53–01A, Rev. 0, dated June 5, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Diamond Aircraft Industries, Inc., 1560 Crumlin Sideroad, London, Ontario, Canada N5V 1S2. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) This amendment (39–10062) becomes effective on July 14, 1997 to all persons except those persons to whom it was made immediately effective by priority letter AD 97–13–02, issued June 12, 1997, which contained the requirements of this amendment.

Issued in Kansas City, Missouri, on June 26, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–17450 Filed 7–2–97; 8:45 am]

BILLING CODE 4910–13–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Parts 2200, 2203, 2204

Revisions to Procedural Rules Governing Practice Before the Occupational Safety and Health Review Commission

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: This document makes several revisions to the procedural rules governing practice before the Occupational Safety and Health Review Commission.

DATES: Effective July 3, 1997.

FOR FURTHER INFORMATION CONTACT: Earl R. Ohman, Jr., General Counsel, (202) 606–5410, Occupational Safety and Health Review Commission, 1120 20th St., N.W., Ninth Floor, Washington, DC 20036–3419.

SUPPLEMENTARY INFORMATION: On March 14, 1997 the Commission published in the **Federal Register** several proposed changes to its Rules of Procedure. 62 FR 12134 (March 14, 1997). The Commission found the comments received pursuant to that proposal to be very helpful. As a result, several proposals have been modified or eliminated. The Commission wishes to thank those who responded for their time and interest, and the quality of their comments.

1. Service and Notice

The Commission proposed amending Rule 7(g) by revising the language in the form at the end of the rule from ''All pleadings relevant to this matter may be inspected at:'' to ''All papers relevant * * *'' This is a technical change that conforms the form to the language in the first paragraph of the rule and should have no significant impact on Commission practice. The Commission received no comments regarding this change and the Commission adopts the amendment as proposed.

2. Facsimile Transmission

The Commission proposed amending Rule 8(f) to allow a document to be filed with the Commission by facsimile transmission only when all of the parties are served by fax. The purpose of the amendment was to prevent confusion regarding the time of filing and, therefore, the applicability of the 3-day mail box.

All comments addressing this proposed rule were opposed to the amendment. The commentators opined that the Commission is addressing a nonexistent problem and suggested that there is no confusion regarding the date of service when a party is served by mail and the document filed with the Commission by fax because dates are calculated from the time of service on the parties, not when the document is received by the Commission. The commentators also noted that, under the proposal, faxing would be prohibited whenever one of the parties (probably a pro se) does not have a fax machine.

The Commission finds the comments to be well-taken and it withdraws the proposed amendment.

3. Claims of Privilege

Currently, Rule 11(c) allows a party fifteen days to respond to another party's claim of privilege. The Commission proposed amending its rule to require that the time for responding to such claims be ten days, the same as other motions.

While the proposal found no support, four commentators expressed similar

objections. The primary objection to the rule was that by reducing the time a party has to object to a claim of privilege, the Commission was dramatically increasing the likelihood that the judge would be interjected into the discovery process because (1) the parties would no longer have the time to work out their dispute, and (2) the requesting party would not have the time to determine whether any ''privileged'' information requested was sufficiently necessary to require judicial intervention. Noting that there is no similar time limit in the Federal Rules, the commentators suggested that, rather than reduce the time to object, the Commission eliminate the time limit in its entirety. The opposition included both the Secretary of Labor and experienced practitioners before the Commission. In light of these comments, the Commission will reconsider whether to keep the current rule, raise rather than reduce the time for responding to a claim of privilege, or eliminate the rule in its entirety. Accordingly, the proposed amendment is withdrawn.

4. Opposition to Motions

The Commission proposed amending Rule 40(a) to require that a moving party contact the other parties to determine whether there is any opposition to a motion.

Several commentators were concerned about the possible burden the rule would place on them, especially where there may be difficulty in contacting the other party. While the Commission finds the concern to be well-taken, it is the Commission's view that a rule that requires a moving party to determine if there is any opposition would help streamline Commission practice by allowing judges to rule quickly on unopposed motions. However, the proposed rule has been revised to address the concerns of the commentators. Accordingly, the moving party will be required to make ''reasonable efforts'' to determine whether there is any opposition to its motion.

The Commission was also concerned with a commentator's opinion that it would be a waste of time to determine whether there are any objections to motions that would obviously be opposed. It is the Commission's view that attempts to restrict applicability of the rule to those motions that ''might'' encounter opposition would be too subjective to be effective.

Another commentator was concerned that the rule would require the moving party to determine not only if the motion will be opposed, but also the nature of the opposition. The concern is misplaced. The rule does not call on the moving party to determine the nature of or grounds for the opposition.

5. Subpoenas

The Commission proposed a new Rule 57(b) to explicitly allow subpoenas to be served either by certified mail with return receipt, or by leaving a copy of the subpoena at the named person's principal place of business or residence. Currently, the Commission applies Federal Rule of Civil Procedure 45(b)(1) which provides only for personal service. It is the opinion of the Commission that any benefit obtained by requiring personal service does not justify the additional expense to the parties.

The proposal was generally supported by the commentators and the rule is adopted as proposed. The Commission's subpoena forms will be revised to coincide with new Rule 57(b).

6. Notification of Hearing

The Commission proposed amending Rule 60 to reduce the minimum time for a notice of hearing from thirty to twenty days.

One commentator suggested that the shorter notice would force employers to be rushed and ill-prepared for hearing. Another commentator opined that the mail time involved would reduce the effective notice to well below twenty days.

It is the experience of the Commission that the current minimum notice period is rarely invoked. Hearing dates must comply with the judge's calendar, which almost always dictates that more than 30 days notice be given. Simple cases, which may have been more appropriate for an early hearing, are now often scheduled under E–Z trial procedures, where the 30-day limitation does not apply. Accordingly, the Commission will not reduce the minimum 30-day notice period for the initial scheduling of the hearing.

A question, however, arises where the hearing is being rescheduled. Under the present rule, at least ten days notice is required for previously postponed hearings. The provision does not apply to rescheduled hearings that have not been previously postponed. Accordingly, such cases cannot be rescheduled in less than thirty days. The Commission finds that previously unpostponed hearings should be rescheduled on the same basis as previously postponed hearings. Accordingly, the proposed rule is revised to allow a minimum of ten days notice for all rescheduled hearings.

7. Elimination of 20-day Transmittal Period for Judges' Decisions

The Commission proposed amending Rule 90(b)(2) to eliminate the twenty day transmittal period for Judges' decisions. This twenty day period was instituted at a time when the Commission's case load was substantially heavier and the Commission was burdened by last-minute petitions for discretionary review.

One commentator who supported the idea of eliminating the 20-day period opined that the period served a useful purpose by allowing a judge to correct mistakes or reconsider decisions. This commentator suggested that the judges' discretion to use the period is particularly valuable in large and complex cases. The Commission appreciates this observation. However, it appears that the Commission's judges have rarely been asked to reconsider their decisions during the 20-day period.

The Secretary strongly opposed the proposal. Noting that she is a party in every case, the Secretary suggested that elimination of the 20-day period would constitute a special hardship for her office. The Secretary suggested that the proposal, if adopted, would not leave her with sufficient time to make an informed decision on whether to seek review. This, she contends, would result in the filing of preemptive petitions for review, which might, upon further review, be withdrawn.

While the Commission appreciates the Secretary's schedule problems, it notes that it has an obligation to decide cases in a quick and efficient manner. The Commission also recognizes, however, that no efficiencies will be gained by forcing the Secretary into filing preemptory petitions for review.

Accordingly, in light of the above comments, the Commission will reduce the waiting period to 10-days, and will monitor the impact of this change to determine whether further reductions in the waiting period are practical.

8. Number of Copies Submitted to the Commission

The Commission proposed amending Rules 8(d)(2), 91(h) and 93(h) to require that when a case is before the Commission the original plus eight copies of a petition for review, brief or other document be filed. The Commission has found that the four copies required under the current rule are inadequate. As a result, the Commission spends time and incurs expense to make the necessary copies. This amendment would rectify the situation.

The only objection to these amendments was received from the Secretary who, noting that she would be affected in every case, was concerned about the cost to her of the additional copies. While the Secretary correctly notes that she is a party in every case and that the burden and expense of the extra copies will fall harder on her than on other parties the Commission observes that it also is involved in every case, and must have adequate copies of every document from both parties. Therefore, the expense of reproducing the necessary copies falls even harder on the Commission. It is the Commission's view that the burden of providing the necessary copies of documents is properly placed on the parties. Accordingly, the proposed amendments are adopted.

9. Amendments to the Commission's Rules Implementing the Equal Access to Justice Act

To conform to recent amendments to the EAJA, the Commission proposed amending its EAJA Rule 107 to change the hourly rate from $75 per hour to $125 per hour.

The Commission also proposed amending EAJA Rule 301 to conform to its decision in *Asbestos Abatement Consultation and Engineering,* 15 BNA OSHC 1252, 1254–56, 1991–93 CCH OSHD ¶ 29,464, pp. 39,731–32 (No. 87–1522,1991), which held that applications for EAJA awards must be received by the Commission within thirty days of the final order date.

The proposed amendments were well-received and the Commission adopts them as proposed.

List of Subjects

29 CFR Part 2200

Hearing and appeal procedures, Administrative practice and procedure.

29 CFR Part 2203

Sunshine Act, Information, Public meetings.

29 CFR Part 2204

Administrative practice and procedure, Equal access to justice.

Text of Amendment

For the reasons set forth in the preamble, the Occupational Safety and Health Review Commission amends Title 29, Chapter XX, Parts 2200, 2203 and 2204 of the Code of Federal Regulations as follows:

PART 2200—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 29 U.S.C. 661(g), unless otherwise noted.

2. Section 2200.7 is amended by revising paragraph (g) to read as follows:

§ 2200.7 Service and notice.

In § 2200.7(g) remove the words ''All papers relevant to this matter may be inspected at:'' and add in their place the words ''All pleadings relevant to this matter may be inspected at:''

3. Section 2200.8 is amended by revising paragraph (d)(2) to read as follows:

§ 2200.8 Filing.

* * * * *

(d) *Number of copies.*

* * * * *

(2) If a case is before the Commission for review, the original and eight copies of a document shall be filed.

* * * * *

4. Section 2200.40 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 2200.40 Motions and requests.

(a) *How to make.* * * * Prior to filing a motion, the moving party shall confer or make reasonable efforts to confer with the other parties and shall state in the motion if any other party opposes or does not oppose the motion.

* * * * *

5. In § 2200.57 paragraphs (b)–(d) are redesignated (c)–(e) and a new paragraph (b) is added to read as follows:

§ 2200.57 Issuance of subpoenas; petitions to revoke or modify subpoenas; right to inspect or copy data.

* * * * *

(b) *Service of subpoenas.* A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein may be made by service on the person named, by certified mail return receipt requested, or by leaving a copy at the person's principal place of business or at the person's residence with some person of suitable age and discretion residing therein.

* * * * *

6. Section 2200.60 is amended by revising the second sentence to read as follows:

§ 2200.60 Notice of hearing; location.

* * * If a hearing is being rescheduled, or if exigent circumstances are present, at least ten days' notice shall be given.* * *

7. Section 2200.90 is amended by revising the first sentence of paragraph (b)(2) to read as follows:

§ 2200.90 Decisions of judges.

* * * * *

(b) * * *

(2) *Docketing of Judge's report by Executive Secretary.* On the eleventh day after the transmittal of his decision to the parties, the Judge shall file his report with the Executive Secretary for docketing.* * *

* * * * *

8. Section 2200.91 is amended by revising the first two sentences of paragraphs (b) and all of paragraph (h) to read as follows:

§ 2200.91 Discretionary review; petitions for discretionary review; statements in opposition to petitions.

* * * * *

(b) *Petitions for discretionary review.* A party adversely affected or aggrieved by the decision of the Judge may seek review by the Commission by filing a petition for discretionary review. Discretionary review by the Commission may be sought by filing with the Judge a petition for discretionary review within the 10-day period provided by § 2200.90(b)(2).* * *

* * * * *

(h) *Number of copies.* An original and eight copies of a petition or a statement in opposition to a petition shall be filed.

9. Section 2200.93 is amended by revising paragraph (h) to read as follows:

§ 2200.93 Briefs before the Commission.

* * * * *

(h) *Number of copies.* The original and eight copies of a brief shall be filed. See § 2200.8(d)(2).

* * * * *

§§ 2200.11, 2200.57, 2200.67, 2200.101 [Amended]

10. In §§ 2200.11, 2200.57, 2200.67, and 2200.101 all references to ''subpena'' are revised to read ''subpoena'' and all references to ''subpenas'' are revised to read ''subpoenas'' wherever they appear.

PART 2203—[AMENDED]

1. The authority for Part 2203 continues to read as follows:

Authority: 29 U.S.C. 661(g); 5 U.S.C. 552b(d)(4); 5 U.S.C. 552b(g).

2. Part 2203 is amended as follows:

§ 2203.3 [Amended]

Section 2203.(b)(10) is revised by changing the reference to ''subpena'' to read ''subpoena.''

PART 2204—[AMENDED]

1. The authority for Part 2204 continues to read as follows:

Authority: Section 203(a)(1), Pub. L. 96–481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)); Pub. L. 99–80, 99 Stat. 183.

2. Section 2204.107 is amended by revising the first sentence of paragraph (b) to read:

§ 2204.107 Allowable fees and expenses.

* * * * *

(b) An award for the fee of an attorney or agent under these rules shall not exceed $125 per hour, unless the Commission determines by regulation that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys or agents for Commission proceedings, justifies a higher fee. * * *

* * * * *

3. Section 2204.301 is revised to read as follows:

§ 2204.301 Filing and service of documents.

An EAJA application is deemed to be filed only when received by the Commission. In all other respects, an application for an award and any other pleading or document related to an application shall be filed and served on all parties to the proceeding in accordance with §§ 2200.7 and 2200.8, except as provided in § 2204.202(b) for confidential financial information.

Dated: June 26, 1997.

Stuart E. Weisberg,

Chairman.

Dated: June 26, 1997.

Daniel Guttman,

Commissioner.

[FR Doc. 97–17381 Filed 7–2–97; 8:45 am]

BILLING CODE 7600–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–104–FOR]

Virginia Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Virginia abandoned mine land reclamation plan (hereinafter referred to as the ''Virginia plan'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment is intended to streamline Virginia's total AMLR plan to be consistent with the Federal regulations.

EFFECTIVE DATE: July 3, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Telephone: (540) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Plan

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. Background on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981 **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and AMLR program amendments are identified at 30 CFR 946.20 and 946.25.

II. Submission of the Proposed Amendment

By letter received February 29, 1996 (Administrative Record No. VA–871), the Virginia Division of Mined Land Reclamation (DMLR) submitted a proposed Program Amendment to the Virginia Program. This amendment is intended to streamline Virginia's total AMLR plan to more closely parallel the Federal state reclamation plan information requirements of 30 CFR 884.13.

The proposed revisions to the Virginia Program concern: the purpose of the State reclamation program; ranking and selection; coordination with other programs; land acquisition, management and disposal; reclamation on private land; rights of entry; public participation policies; organization; staffing policies; purchasing and procurement; accounting system; location of known or suspected eligible land and water; description of problems occurring on lands and waters (map); reclamation proposals; economic base; aesthetic, historic or cultural, and recreation values; and endangered and threatened plant, fish, wildlife and habitat. The primary purpose of the amendment is to incorporate the 1990 amendments to SMCRA, and the AMLR provisions of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992).

OSM announced receipt of the proposed amendment in the March 18, 1996, **Federal Register** (61 FR 10919), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on April 17, 1996. No public hearing was requested, so none was held.

During its review of the amendment, OSM identified concerns relating to various sections of the proposed plan and provided draft comments to the State (Administrative Record Number VA–898). OSM representatives met with DMLR representatives on October 31, 1996, and November 4, 1996, to resolve comments included in the draft list prepared by OSM (Administrative Record Number VA–899).

On November 19, 1996, OSM conducted a telephone conference with DMLR representatives, and on November 20, 1996, OSM representatives met with DMLR representatives to continue to resolve issues in the draft issues list. The results of the November 19, 1996, teleconference and the November 20, 1996, meeting, including the changes proposed by the DMLR to be made to the Virginia plan submittal, are documented in the Virginia Administrative Record Number VA–900. In addition, VA–900 contains copies of the forms (Lien Waiver, Right of Entry, Claim of Lien, and AML Complaint Investigation) that the DMLR uses to implement the Virginia program. These forms are considered by OSM to be part of the Virginia plan submittal.

On December 5, 1996, OSM conducted a telephone conference with DMLR representatives to resolve the remaining issues. The results of that telephone conference are documented at Administrative Record Number VA–901.

On December 10, 1996, Virginia submitted draft language to the U.S. Fish and Wildlife Service (USFWS) to address USFWS comments made on April 4, 1996 (Administrative Record Number VA–904).

On January 7, 1997, the USFWS recommended further modifications to the endangered and threatened species section of the proposed AMLR plan amendment wording (Administrative Record Number VA–905).

On February 6, 1997, OSM provided USFWS with Virginia's AMLR plan language that was revised in response to USFWS comments on endangered and threatened species (Administrative Record Number VA–906).

On February 10, 1997 (Administrative Record Number VA–907), OSM met with DMLR to discuss changes made to the AMLR plan amendment by Virginia to address OSM's comments on the amendment that were identified in OSM's draft issues list (Administrative Record Number VA–898).

On February 7, 1997, USFWS confirmed that DMLR's draft wording changes to the endangered and threatened species section of the proposed AMLR plan amendment now includes the modifications proposed by USFWS (Administrative Record Number VA–908).

On February 10, 1997, the U.S. Environmental Protection Agency (EPA) confirmed that draft wording modifications to the proposed Virginia AMLR plan amendment received from DMLR on November 20, 1996, resolve EPA's identified concerns (Administrative Record Number VA–909).

On February 14, 1997, OSM proposed wording changes to DMLR to resolve OSM concerns regarding sentences added to the proposed AMLR plan amendment by DMLR related to remining (Administrative Records Number VA–910).

On February 27, 1997, DMLR agreed to modify that AMLR plan wording to resolve OSM concerns regarding sentences added to the proposed AMLR plan amendment by DMLR related to remining (Administrative Records Number VA–911).

By electronic mail correspondence dated March 5, 1997 (Administrative Records Number VA–912), Virginia submitted a revised copy of the proposed AMLR plan that contains the changes made to resolve the issues identified by OSM, the USFWS, and the EPA.

OSM reopened the public comment period on March 18, 1997 (52 FR 12776). The written comment period closed on April 2, 1997.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 884.14 and 884.15, finds that the proposed plan amendments submitted by Virginia on February 29, 1996, and revised on March 5, 1997 and May 8, 1997, and supplemented with additional materials documented in Virginia Administrative Record Number VA–900 and VA–906, meet the requirements of the corresponding Federal regulations and is consistent with SMCRA.

A. Section 884.13(a) Governor's Letter of Designation

This section contains a designation by the Governor of Virginia to the Virginia Department of Conservation and Economic Development as the State agency authorized to implement and administer the Abandoned Mine Reclamation Program. The Commissioner of the Division of Mined Land Reclamation will be Virginia's primary point of contact.

The Director finds this section meets the requirements of the Federal regulations at 30 CFR 884.13(a).

B. Section 884.13(b) Legal Opinion

This section contains legal opinions that the State of Virginia has the legal authority to implement, administer, enforce, and amend the Virginia program.

The Director finds that this section meets the requirements of the Federal regulations at 30 CFR 884.13(b).

C. Section 884.13(c)(1) Purpose of the State Reclamation Program

This section explains that the Virginia program will provide for the lands and waters affected by past mining, in order to restore these lands and waters to a safe, productive and environmentally sound use, in accordance with Virginia's conservation and land reclamation policies.

The Director finds that this section meets the requirements of the Federal regulations at 30 CFR 884.13(C)(1).

D. Section 884.13(c)(2) Ranking and Selection

This section provides that the Virginia program uses a priority system which recognizes the five abandoned mine land problem priorities as described in Title IV, Section 403 of SMCRA. This section also describes the criteria which coal lands and water must meet to be eligible for reclamation activities under the Virginia program. The specific details of this section were developed in cooperation with the U.S. Environmental Protection Agency.

As subsection entitled ''Acid Mine Drainage Abatement—Treatment'' provides that Virginia may establish under State law an interest bearing acid mine drainage abatement and treatment fund. The fund will be utilized by Virginia, in consultation with the Natural Resources Conservation Service, to implement acid mine drainage abatement and treatment plans approved by the Secretary of the Interior. This subsection also contains the minimum criteria that those plans must meet.

A subsection entitled ''Utilities and Other Facilities'' provides that the Virginia program may expend up to 30 percent of the funds granted annually in accordance with SMCRA for the purpose of protecting, repairing, replacing, constructing, or enhancing eligible facilities relating to water supplies adversely affected by coal mining practices. A subsection entitled ''General Selection and Ranking'' provides the specific criteria to be used to determine whether or not proposed reclamation will be undertaken and to assign priorities to projects intended to meet the same objective. This subsection also contains site parameter guidelines that define the terms found in this section, and an AML water project evaluation guide. The parameters and relative weighting values assigned for use in the site evaluation matrix and water project evaluation guide have been developed by DMLR to reflect the priorities set forth in Section 403(a) of SMCRA.

A subsection entitled ''AML Emergency Program'' states that provisions for a State emergency program are provided through Chapter 19, Title 45.1 of the Code of Virginia (VASMCRA). This subsection also provides the criteria with which the Division of Mines, Minerals and Energy (DMME) will comply while abating emergency situations.

The Director finds that the provisions of this section meet the requirements of the Federal regulations at 30 CFR 884.13(c)(2).

E. Section 884.13(c)(3) Coordination With Other Programs

This section provides for the consultation of the Virginia program with a number of Federal and State agencies having either a direct or indirect interest in proposed AML reclamation projects. Coordination with Indian tribes is not applicable in Virginia because there are no Indian tribes located within Virginia.

The Director finds the provisions of this section meet the requirements of the Federal regulations at 30 CFR 884.13(c)(3).

F. Section 884.13(c)(4) Land Acquisition, Management and Disposal

This section provides for the acquisition, management, and disposal of lands by Virginia if the DMME Director, with advance approval by OSM, determines in writing that acquisition of such land is necessary to successful reclamation.

The Director finds that these provisions meet the requirements of the

Federal regulations at 30 CFR 884.13(c)(4) and 879.

G. Section 884.13(c)(5) Reclamation on Private Land

This section provides the criteria to be followed when reclamation is to be carried out on private land. When reclamation is to be carried out on private land, the DMME shall adhere to the regulation governing appraisal and liens as set forth in Part 480–03–19.882 of the VSMCRA regulations and Section 45.1–264 through 45.1–269 of the Code of Virginia. Notarized appraisals shall be obtained in both emergency and non-emergency situations. Liens may be placed or waived by the Director of DMME, against land reclaimed as directed by Part 480–03–19.882.

The Director finds this section meets the requirements of the Federal regulations at 30 CFR 884.13(c)(5) and is consistent with Part 882.

H. Section 884.13(c)(6) Rights of Entry

This section provides the criteria to be followed to obtain the rights of entry onto private lands to conduct reclamation activities. Prior to entry onto private lands, written consent from the owner of record and lessee, or their authorized agents, will be obtained by the DMME for its authorized agents or contractors to enter upon such lands in order to carry out reclamation activities. This section also sets forth the procedures to be followed when written consent cannot reasonably be obtained. This section also provides for rights of entry onto Federal lands.

The Director finds this section meets the requirements of the Federal regulations at 30 CFR 884.13(c)(6).

I. Section 884.13(c)(7) Public Participation Policies

This section provides that the DMLR will follow the procedures set forth by the Virginia Administrative Process Act for publication of all meetings required to be public under the Freedom of Information Act. This section also sets forth the procedures to be followed by the DMLR regarding public notice of its participation in the process of obtaining AMLR program financial grants from OSM. When there are State reclamation program amendments, Virginia will use OSM's public participation process rather than have a separate procedure.

The Director finds this section meets the requirements of the Federal regulations at 30 CFR 884.13(c)(7).

J. Section 884.13(d)(1) Organization

This section sets forth the organization of the Virginia program. The DMLR is divided into three groups: One administers the AML program, and the other two groups administer the Environmental Impacts of Surface Coal Mining (Title V). The plan describes the major functions of the AML program and the Title V program, and includes a general organizational AML program flowchart.

The Director finds this section meets the requirements of the Federal regulations at 30 CFR 884.13(d)(1).

K. Section 884.13(d)(2) Staffing Policies

This section sets forth the policies to be followed by the DMME in its operation of the Virginia program.

The Director finds this section meets the requirements of the Federal regulations at 30 CFR 884.13(d)(2).

L. Section 884.13(d)(3) Purchasing and Procurement

This section sets forth the procedures to be followed by the DMLR in its operation of the Virginia program. The purchasing and procurement system will conform to the requirements of the Grants Management Common Rule codified by the U.S. Department of the Interior at 43 CFR Part 12, Subpart C (which superseded the Office of Management and Budget Circular A–102, Attachment O), and the Code of Virginia Public Procurement Act.

The Director finds this section meets the requirements of the Federal regulations at 30 CFR 884.13(d)(3).

M. Section 884.13(d)(4) Accounting System

This section sets forth the accounting system to be used by the DMLR in implementing the Virginia program. The DMLR uses a financial management system that provides for compliance with the Grants Management Common Rule codified by the U.S. Department of the Interior at 43 CFR Part 12, Subpart C, Office of Management and Budget (OMB) Circular No. A–102 (Grants and Cooperative Agreements to State and Local Governments), No. A–87 (Cost Principle for State and Local Governments), No. A–128 (Single Audit Act), and all other applicable State and Federal laws and regulations.

The Director finds this section meets the requirements of the Federal regulations at 30 CFR 884.13(d)(4).

N. Section 884.13(e)(1) Location of Known or Suspected Eligible Lands and Water (Map)

This section depicts on a map, the locations of known and suspected pre-1977 abandoned mine land problems and eligible post-1977 sites in Virginia.

The Director finds this meets the requirements of the Federal regulations at 30 CFR 884.13(1).

O. Section 884.13(e)(2) Description of Problems Occurring on Lands and Waters

This section identifies the typical AML problems in Virginia.

The Director finds this section meets the requirements of the Federal regulations at 30 CFR 884.13(e)(2).

P. Section 884.13(e)(3) Reclamation Proposals

This section sets forth examples of how the DMLR may address each of the problems identified in § 884.13(e)(2) as occurring on lands and waters of Virginia.

The Director finds this section meets the requirements of the Federal regulations at 30 CFR 884.13(e)(3).

Q. Section 884.13(f)(1) Economic Base

This section sets forth a general description of the economic base prevailing in the different geographic areas of Virginia where reclamation is planned.

The Director finds this meets the requirements of the Federal regulations at 30 CFR 884.13(f)(1).

R. Section 884.13(f)(2) Aesthetic, Historical or Cultural and Recreation Values

This section sets forth a general description of the significant aesthetic, historical or cultural and recreational values prevailing in the different geographic areas of Virginia where reclamation is planned.

The Director finds this section meets the requirements of the Federal regulations at 30 CFR 884.13(f)(2).

S. Section 884.13(f)(4) Endangered and Threatened Plant, Fish, Wildlife and Habitat

This section sets forth a general description of the endangered and threatened plant, fish, and wildlife and their habitat prevailing in the different geographic areas of Virginia where reclamation is planned. The specific details of this section were developed in cooperation with the U.S. Fish and Wildlife Service.

The Director finds this section meets the requirements of the Federal regulations at 30 CFR 884.13(f)(3).

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed

amendment. No public comments were received in response to the public comment periods that ended on April 17, 1996, and April 2, 1997. Because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 884.14(a)(2) and 884.15(a), OSM solicited comments on the proposed amendment from various other Federal agencies with an actual or potential interest in the Virginia plan (Administrative Record number VA–872). The U.S. Natural Resources Conservation Service (NRCS) responded (Administrative Record Number VA–875) and stated that the NRCS position is that the amendments be accepted and incorporated in the Virginia plan. The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) responded (Administrative Record Number VA–878) that the amendments are deemed appropriate since there appears to be no conflict with MSHA regulations.

The U.S. Fish and Wildlife Service (FWS) responded with several comments. Concerning Rights of Entry (884.13(c)(6)), the FWS recommended that, for clarity, on page 33 of the original submittal, the ''Secretary of the Interior'' be amended to read ''United States'' Secretary of the Interior. The FWS also recommended that the last paragraph of this section be amended to clarify that Virginia may enter into agreements with the U.S. Secretary of the Interior only of Federally owned lands under the Secretary's authority, including but not limited to national parks and refuges. The FWS also recommended that Virginia reference other Federal agencies not under the Department of the Interior, if their lands may also be impacted.

The FWS also commented on the section titled ''Description of Problems Occurring on Lands and Waters (Map) (884.13(e)(2)). The FWS commented that the prioritization of abandoned mine lands for reclamation under Ranking Selection Criteria 3 (addressing degraded land and water resources) should not be predicated on whether or not the site is remote. The prioritization process should, the FWS stated, consider type and extent of damage, analysis of further degradation that may potentially occur, species and habitat resources present or formerly present that may be recovered, and the potential for reclamation.

The FWS commented on the section titled ''Endangered and Threatened Plants, Fish, Wildlife and Habitat (884.13(f)(3)). The FWS recommended that this section be reorganized for clarity, and provided several suggestions.

Finally, the FWS requested that representatives of OSM and DMLR meet with the FWS to review the procedures for ensuring that Federally listed species and their habitat are protected during the reclamation of abandoned mine lands and considered during the site prioritization process.

In response, the Director notes that OSM discussed with the DMLR and with the FWS on various occasions (see ''Submission of the Proposed Amendment'' above) the comments submitted by FWS. In a meeting held on July 16, 1996 (see Administrative Record Number VA–898 and 899), the OSM, FWS, and DMLR agreed that to resolve FWS comments on Virginia's AMLR Plan amendment by the following : Clarify language in the last paragraph of the Rights of Entry section to reference the U.S. Secretary of the Interior; Delete the phrases ''and located in remote areas'' and ''in more densely populated areas'' from the Description of Problems Occurring on Lands and Waters section; and Rewrite and reorganize the Endangered and Threatened Plants, Fish, Wildlife, and Habitat section of the plan. The Director notes that these suggested changes were adopted in the final version of the Virginia plan. In addition, the FWS subsequently concurred that with the changes made by the DMLR concerning endangered and threatened species, the AMLR plan amendment now includes these modifications proposed by FWS in 1997 and discussed on February 5, 1997 (Administrative Record Number VA–908).

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of EPA with respect to those provisions of the proposed plan amendment that relate to air or water quality standards promulgated under the authority of the Clean Air Act (42 U.S.C. 7401 *et seq.*) or the Clean Water Act (33 U.S.C. 1252 *et seq.*). The Director has determined that the proposed amendments contain no provisions in these categories and that EPA's concurrence is not required.

Pursuant to 732.17(h)(11)(I), OSM solicited comments on the proposed amendments from the EPA. The EPA provided the following comments (Administrative Record Number VA–879). Concerning the section titled ''Ranking and Selection (884.13(c)(2)), the EPA commented that there may be situations where impacts on water quality outweigh minor safety related projects (such as reclaiming unstable highwalls in remote areas). Health and safety projects are normally rated ahead of environmental related projects. EPA recommended that the State consider raising some water quality related projects to higher priority status in those circumstances where it is warranted.

EPA noted that the site evaluation matrix shown in Figure 1 provides relative weighting for funding purposes for 15 parameters, including water quality. EPA stated that the relative weight for water quality appears far too small and ranks ninth behind even vegetative cover and surface instability. EPA recommended that the weighting factor for water quality be increased significantly to reflect the growing emphasis for cleaning up streams impacted by abandoned mine drainage.

In response, the Director notes that OSM discussed with the DMLR and with the EPA on various occasions (see ''Submission of the Proposed Amendment'' above) the comments submitted by EPA. The EPA subsequently acknowledged that with the changes made to the AMLR plan by the DMLR, the concerns identified by the EPA are resolved (Administrative Record Number VA–909).

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP. No comments were received.

V. Director's Decision

Based on the above findings, the Director is approving the proposed AMLR plan amendment as submitted by Virginia on February 29, 1996, and revised on March 5, 1997, and May 8, 1997, and supplemented with additional materials documented in Virginia Administrative Record Number VA–900 and VA–906.

The Federal regulations at 30 CFR Part 946.25, codifying decisions concerning the Virginia plan amendments, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State plan amendment process and to encourage States to bring their plans into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and

Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and promulgated by a specific State or Tribal, not by OSM. Decisions on proposed abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV or SMCRA (30 U.S.C. 1231–1243) and 30 CFR Parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 16, 1997.

Tim L. Dieringer,

Acting Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 946—VIRGINIA

1. The authority citation for part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 946.25 is amended in the table for paragraph (a) by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 946.25 Approval of Virginia abandoned mine land reclamation plan amendments.

(a) * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
Feb. 29, 1996	July 3, 1997	Revisions to the Virginia State Reclamation Plan corresponding to 30 CFR 884.13(a), (b), (c)(1), (c)(2), (c)(3), (c)(4), (c)(5), (c)(6), (c)(7), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (f)(1), (f)(2), and (f)(3).

* * * * *

[FR Doc. 97–17403 Filed 7–2–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–97–048]

RIN 2115–AA97

Safety Zone: Yampol Family Fireworks Display, Cove Neck, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on July 4, 1997, for the Yampol Family Fireworks Display to be held in Oyster Bay and Cold Spring Harbor, Cove Neck, NY. This safety zone is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with this fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: This regulation is effective on July 4, 1997, from 9 p.m. until 10 p.m.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander J.A. McCarthy, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4444.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, good cause exists for not publishing a notice of proposed rulemaking (NPRM) and for making this rule effective in less than 30 days after **Federal Register** publication. The sponsor of the event did not provide the Coast Guard with the final details for the event in sufficient time to publish a NPRM or a final rule 30 days in advance. The delay encountered if normal rulemaking procedures were followed would effectively cancel the event. Cancellation of this event is contrary to the public interest since the fireworks display is for the benefit of the public.

Background and Purpose

The sponsor, Azurite Corp. LTD., of Cove Neck, NY, requested that a fireworks display, be permitted in Oyster Bay and Cold Spring Harbor, located directly opposite the Yampol Marina docks Cove Neck NY, Cove Neck, NY. This regulation establishes a temporary safety zone in all waters of Cove Neck, NY within a 1200 foot radius of the fireworks launching

barges. The safety zone is in effect on July 4, 1997, from 9 p.m. until 10 p.m. and is necessary to protect the maritime community from the safety hazards associated with this fireworks display. Entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port or his on scene representative.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Entry into this zone will be restricted for a brief period of time on July 4, 1997. Although this regulation prevents traffic from transmitting a portion of the Atlantic Ocean, off Cove Neck, NY, the effect of this regulation will not be significant for several reasons: the duration of the event is limited; the event is at a late hour; all vessel traffic may pass to the western side of this safety zone; and extensive, advance maritime advisories will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard finds that this rule will not have a significant impact on a substantial number of small entities. If however, you think that your business or organization qualifies as a small entity and that this rule will have a significant impact upon your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this action under the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, as revised by 59 FR 38654, July 29, 1994, this rule is categorically excluded from further environmental documentation.

A Categorical Exclusion Determination and an Environmental Analysis Checklist are included in the docket and are available for inspection or copying at the location indicated under **ADDRESSES**. An appropriate environmental analysis of the fireworks program will be conducted in conjunction with the marine event permitting process.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A temporary section, 165.T01–048, is added to read as follows:

§ 165.T01–CGD1–048 Yampol Family Fireworks Display, Cove Neck, NY.

(a) *Location.* The safety zone includes all waters of Oyster Bay and Cold Spring Harbor within a 1200 foot radius of the fireworks barge, located directly opposite the Yampol Marina docks Cove Neck NY in Oyster Bay and Cold Spring Harbor, in Cove Neck, NY, in approximate position 40°53′17″ N, 073°29′44″ W. (NAD 1983).

(b) *Effective date.* This section is effective on July 4, 1997, from 9 p.m. until 10 p.m., unless terminated sooner by the Captain of the Port Long Island Sound. In case of inclement weather, this regulation will be effective on July 5, 1997, at the same times.

(c) *Regulations.* The general regulations contained in § 165.23 apply.

Dated: June 16, 1997.

P.K. Mitchell,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 97–17388 Filed 7–2–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 1, 3, and 9

RIN 2900–AI73

Servicemen's and Veterans' Group Life Insurance

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) regulations relating to Servicemen's and Veterans' Group Life Insurance (SGLI/VGLI) to conform the regulations to statutory changes. In this regard, the regulations are amended to reflect the merger of the Retired Reservist Servicemen's Group Life Insurance (RR SGLI) program into the VGLI program; to reflect the extension of VGLI coverage to members separating from the Ready Reserve; and to rename the SGLI program as ''Servicemembers'' Group Life Insurance.''

EFFECTIVE DATE: July 3, 1997.

FOR FURTHER INFORMATION CONTACT: Jeanne Derrick, Attorney/Advisor, Insurance Program Administration and Oversight, Department of Veterans Affairs Regional Office and Insurance Center, P.O. Box 8079, Philadelphia, PA 19101; (215) 842–2000, ext. 4277.

SUPPLEMENTARY INFORMATION: The Veterans' Insurance Reform Act of 1996, Pub. L. 104–275, tit. IV, 110 Stat. 3337, amended sections 1965, 1967, 1968, 1969 and 1977 of title 38, United States Code. The amendments provide for the merger of the Retired Reserve Servicemen's Group Life Insurance (RR SGLI) program into the Veteran's Group Life Insurance (VGLI) program; the extension of VGLI eligibility to members separating from the Ready Reserve; and the renaming of the Servicemen's Group Life Insurance (SGLI) program to ''Servicemembers'' Group Life Insurance.'' VA, accordingly, hereby amends 38 CFR parts 1, 3, and 9 to reflect these statutory changes.

This final rule consists of nonsubstantive changes and, therefore, is not subject to the notice and comment and effective date provisions of 5 U.S.C. 553.

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This final rule will not affect any entity since it does not contain any substantive provisions. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Program number for this regulation is 64.103.

List of Subjects

38 CFR Part 1

Administrative practice and procedure, Claims, Courts, Freedom of information, Government contracts, Privacy, Reporting and recordkeeping requirements.

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

38 CFR Part 9

Life insurance, Military personnel, Veterans.

Approved: May 19, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR parts 1, 3, and 9 are amended as set forth below:

PART 1—GENERAL PROVISIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Part 1 is amended by removing ''Servicemen's'' wherever it appears, and adding, in its place, ''Servicemembers''.

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

3. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

4. Part 3 is amended by removing ''Servicemen's'' wherever it appears, and adding, in its place, ''Servicemembers''.

PART 9—SERVICEMEN'S GROUP LIFE INSURANCE AND VETERANS'' GROUP LIFE INSURANCE

5. The authority citation for part 9 continues to read as follows:

Authority: 38 U.S.C. 501, 1965–1979, unless otherwise noted.

6. In § 9.2, paragraphs (a) and (b)(1) are revised to read as follows:

§ 9.2 Effective date; applications.

(a) The effective date of Servicemembers' Group Life Insurance will be in accordance with provisions set forth in 38 U.S.C. 1967.

(b) * * *

(1) For members whose Servicemembers' Group Life Insurance coverage ceases under 38 U.S.C. 1968 (a)(1)(A) and 38 U.S.C. 1968(a)(4), the effective date shall be the 121st day after termination of duty. An application and the initial premium must be received by the administrative office within 120 days following termination of duty or separation or release from such assignment.

* * * * *

§ 9.8 [Amended]

7. In § 9.8, paragraph (b) is amended by removing ''38 U.S.C. 1968 (a)(4)(B) or''.

8. Part 9 is amended by removing ''Servicemen's'' wherever it appears, and adding, in its place, ''Servicemembers''.

[FR Doc. 97–17412 Filed 7–2–97; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AI83

Minimum Income Annuity

AGENCY: Department of Veterans Affairs.

ACTION: Interim rule with request for comments.

SUMMARY: The Department of Veterans Affairs (VA) is amending its adjudication regulations to provide for payment of the minimum income annuity, authorized by Pub. L. 92–425 as amended, to certain surviving spouses. This amendment is necessary to reflect statutory revisions contained in the National Defense Authorization Act for Fiscal Year 1997 that transfers the responsibility for paying this benefit from the Department of Defense (DoD) to VA.

DATES: *Effective date:* July 1, 1997.

Comment Date: Comments must be received by VA on or before September 2, 1997.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AI83.'' All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7230.

SUPPLEMENTARY INFORMATION: Pub. L. 92–425 section 4, 86 Stat. 706, 712 (1972) (10 U.S.C. 1448 note), provides for payment of a guaranteed minimum annual income (the so-called minimum-income-widow annuity, hereinafter referred to as the minimum income annuity) to certain surviving spouses of persons entitled to military retired or retainer pay at the time of their death. To be eligible, a person must: (1) Be the surviving spouse of a military retiree who died prior to March 24, 1974; (2) be eligible for VA nonservice-connected death pension; (3) have annual income that is less than the maximum annual rate of pension under 38 U.S.C. 1541(b); and (4) be ineligible to receive an annuity under the Survivor Benefit Plan (10 U.S.C. 1447–1455).

Section 638 of the National Defense Authorization Act for Fiscal Year 1997, Pub. L. 104–201, sec. 638, 110 Stat. 2422, 2581, transfers responsibility for the payment of the minimum income annuity to the Secretary of Veterans Affairs from DoD. However, DoD remains responsible for funding this benefit and determining basic eligibility. This transfer is effective on July 1, 1997, and applies with respect to payments of benefits for any month after June 1997.

Pub. L. 104–201 also provides that the minimum income annuity shall not affect the pension eligibility of the surviving spouse even though, as a result of including the amount of the annuity as pension income, no amount of pension is due. We interpret this provision to mean that an individual is still to be considered ''eligible for pension'' from VA for purposes of determining basic eligibility for the minimum income annuity even if that

individual's income is excessive for VA pension purposes when the minimum income annuity is added to any other countable income.

We are adding a new section, 3.811, to title 38, Code of Federal Regulations, to reflect these statutory provisions.

Under DoD procedures (DoD Financial Management Regulation, Chapter 10, 91001), the minimum income annuity is payable to surviving spouses receiving Spanish-American War pension without regard to income. Since the pension paid to survivors of Spanish-American War veterans under 38 U.S.C. 1536 is not an income-based program, we will continue to pay the minimum income annuity to those beneficiaries in the same manner as DoD.

Pub. L. 92–425, as amended, specifies that annual income for minimum income annuity purposes is to be determined in the same manner as VA determines income for pension purposes. Consistent with that requirement, we will determine a beneficiary's annual income for the purpose of the minimum income annuity under the provisions of §§ 3.271 and 3.272 for beneficiaries receiving improved pension, or under §§ 3.260 through 3.262 for beneficiaries receiving old law or section 306 pensions, except that the amount of the minimum income annuity will be excluded from the calculation.

38 U.S.C. 5123 requires VA to round down the amounts of section 306 pension and pension payable under 38 U.S.C. 1521, 1541 and 1542 to the nearest dollar. There is no similar requirement in title 10, United States Code, for computing the minimum income annuity. Therefore, we will not round the monthly minimum income benefit to the nearest whole dollar.

Pub. L. 92–425, as amended, provides that the amount of the minimum income annuity is calculated by subtracting the income of the surviving spouse, exclusive of VA pension, but including benefits payable under 10 U.S.C. 1431–1436 (Retired Servicemen's Family Protection Plan (RSFPP)) from the maximum annual pension rate under 38 U.S.C. 1541(b). Since RSFPP benefits are countable as income for improved pension purposes, for beneficiaries receiving improved pension, VA will determine the minimum income annuity payment by subtracting the annual income for pension purposes from the maximum annual pension rate under 38 U.S.C. 1541(b).

Since RSFPP benefits are not countable income for old law and section 306 pensions (See 38 CFR 3.261(a)(14)), for beneficiaries receiving old law and section 306 pensions, VA will determine the minimum income annuity payment by reducing the maximum annual pension rate under 38 U.S.C. 1541(b) by the amount of benefits payable under the RSFPP, if any, that the beneficiary receives from DoD and the annual income for pension purposes.

VA will recompute the monthly minimum income annuity payment whenever there is a change to the maximum annual rate of pension in effect under 38 U.S.C. 1541(b) and whenever there is a change in the beneficiary's income.

Since a beneficiary must be eligible for VA pension in order to be entitled to the minimum income annuity, if the beneficiary's eligibility to nonservice-connected death pension terminates for any reason, VA will terminate the minimum income annuity effective the same date.

We are making this document effective on July 1, 1997. The document contains restatements of statute and interpretive rules which under the provisions of 5 U.S.C. 553 are exempt from prior notice and public comment and delayed effective date provisions.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

(The Catalog of Federal Domestic Assistance program number is 64.105.)

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: June 4, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.811 is added to read as follows:

§ 3.811 Minimum income annuity.

(a) *Eligibility.* The minimum income annuity authorized by Pub. L. 92–425, as amended, is payable to a person:

(1) Who the Department of Defense has determined meets the eligibility criteria of section 4(a) of Pub. L. 92–425, as amended, other than section 4(a)(1) and (2); and

(2) Who is eligible for pension under subchapter III of chapter 15 of title 38, United States Code, or section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978; and

(3) Whose annual income, as determined in establishing pension eligibility, is less than the maximum annual rate of pension in effect under 38 U.S.C. 1541(b).

(b) *Computation of the minimum income annuity payment.*—(1) *Annual income.* VA will determine a beneficiary's annual income for minimum income annuity purposes under the provisions of §§ 3.271 and 3.272 of this part for beneficiaries receiving improved pension, or under §§ 3.260 through 3.262 of this part for beneficiaries receiving old law or section 306 pensions, except that the amount of the minimum income annuity will be excluded from the calculation.

(2) VA will determine the minimum income annuity payment for beneficiaries entitled to improved pension by subtracting the annual income for minimum income annuity purposes from the maximum annual pension rate under 38 U.S.C. 1541(b).

(3) VA will determine the minimum income annuity payment for beneficiaries receiving old law and section 306 pensions by reducing the maximum annual pension rate under 38 U.S.C. 1541(b) by the amount of the Retired Servicemen's Family Protection Plan benefit, if any, that the beneficiary receives and subtracting from that amount the annual income for minimum income annuity purposes.

(4) VA will recompute the monthly minimum income annuity payment whenever there is a change to the maximum annual rate of pension in effect under 38 U.S.C. 1541(b) and whenever there is a change in the beneficiary's income.

(c) An individual otherwise eligible for pension under subchapter III of chapter 15 of title 38, United States Code, or section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978, shall be considered eligible for pension for purposes of determining eligibility for the minimum income

annuity even though as a result of adding the amount of the minimum income annuity authorized under Pub. L. 92–425 as amended to any other countable income, no amount of pension is due.

(d) *Termination.* Other than as provided in paragraph (c) of this section, if a beneficiary receiving the minimum income annuity becomes ineligible for pension, VA will terminate the minimum income annuity effective the same date.

(Authority: Pub. L. 92–425 as amended (10 U.S.C. 1448 note); Sec. 638, Pub. L. 104–201, 110 Stat. 2581)

[FR Doc. 97–17413 Filed 7–2–97; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Region II, Docket No. 146; NJ23–1–7243(d), FRL–5852–9]

Designation of Areas for Air Quality Planning Purposes; State of New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the direct final approval, which EPA published on December 7, 1995 (60 FR 62741–62748). Specifically, this document corrects entries to the table in section 81.331 of the Code of Federal Regulations (CFR) for ''New Jersey-Carbon Monoxide'' which were not made at the time of the final action. The correction does not affect the decisions made in the original final action.

EFFECTIVE DATE: This rule will be effective July 3, 1997.

FOR FURTHER INFORMATION CONTACT: Henry Feingersh, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION: EPA published a final action on December 7, 1995 to approve a request by the State of New Jersey to redesignate to attainment of the Carbon Monoxide National Ambient Air Quality Standards (NAAQS) Camden County and the nine not classified areas in New Jersey. The December 7, 1995 final action described the changes to be made to the table entitled ''New Jersey-Carbon Monoxide'' in § 81.331 of the CFR. However, not all of the changes were made to the table. The updated attainment status for Camden County was made while the changes for the nine not-classified areas in New Jersey were not. This rulemaking, therefore, corrects the table by including the correct attainment status for the nine not-classified areas.

Three of these not-classified areas, the City of Trenton, the City of Burlington and the Borough of Penns Grove (part), are located within the Philadelphia-Wilmington-Trenton Consolidated Metropolitan Statistical Area (CMSA). Five of the not-classified areas, the Borough of Freehold, the City of Morristown, the City of Perth Amboy, the City of Toms River and the Borough of Somerville, are located in the New York-Northern New Jersey-Long Island CMSA. The remaining not-classified area is the City of Atlantic City, which is not contained within a CMSA.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, and Wilderness areas.

Dated: June 18, 1997.

William J. Muszynski, P.E,

Deputy Regional Administrator.

40 CFR part 81 is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart C—Section 107 Attainment Status Designations

2. In § 81.331, the table for ''New Jersey-Carbon Monoxide'' is revised to read as follows:

§ 81.331 New Jersey.

* * * * *

NEW JERSEY-CARBON MONOXIDE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Atlantic City Area:				
Atlantic County (part):				
The City of Atlantic City	2/5/96	Attainment.		
Burlington Area:				
Burlington County (part):				
City of Burlington	2/5/96	Attainment.		
Freehold Area:				
Monmouth County (part);				
Borough of Freehold	2/5/96	Attainment.		
Morristown Area:				
Morris County (part):				
City of Morristown	2/5/96	Attainment.		
New York-N. New Jersey-Long Island Area:				

NEW JERSEY-CARBON MONOXIDE—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Bergen County	.....	Nonattainment		Moderate >12.7ppm.
Essex County	.....	Nonattainment		Moderate >12.7ppm.
Hudson County	.....	Nonattainment		Moderate >12.7ppm.
Passaic County (part):				
City of Clifton	.....	Nonattainment		Moderate >12.7ppm.
City of Patterson	.....	Nonattainment		Moderate >12.7ppm.
City of Passaic	.....	Nonattainment		Moderate >12.7ppm.
Union County	.....	Nonattainment		Moderate >12.7ppm.
Penns Grove Area:				
Salem County (part):				
Borough of Penns Grove. Those portions within 100 yards of the intersections of U.S. Route 130 and County Roads 675 & 607.	2/5/96	Attainment.		
Perth Amboy Area:				
Middlesex County (part):				
City of Perth Amboy	2/5/96	Attainment.		
Philadelphia-Camden County Area:				
Camden County	2/5/96	Attainment.		
Somerville Area:				
Somerset County (part):				
Borough of Somerville	2/5/96	Attainment.		
Toms River Area:				
Ocean County (part):				
City of Toms River	2/5/96	Attainment.		
Trenton Area:				
Mercer County (part):				
City of Trenton	2/5/96	Attainment.		
AQCR 043 NJ NY Connecticut Interstate (Remainder of)	.....	Unclassifiable/Attainment.		
Middlesex County (part):				
Area outside of Perth Amboy				
Monmouth County (part):				
Area outside of Freehold				
Morris County (part):				
Area outside of Morristown				
Passaic County (part):				
Area outside Clifton, Paterson, and Passaic				
Somerset County (part):				
Area outside of Somerville				
AQCR 045 Metro. Philadelphia Interstate (Remainder of)	.....	Unclassifiable/Attainment.		
Burlington County (part):				
Area outside Burlington				
Gloucester County				
Mercer County (part):				
Area outside Trenton				
Salem County (part):				
Area outside Penns Grove Area				
AQCR 150 New Jersey Intrastate	.....	Unclassifiable Attainment.		
Atlantic County (part):				
Area outside Atlantic City				
Cape May County				
Cumberland County				
Ocean County (part):				
Area outside Toms River				
AQCR 151 NE PA—Upper Delaware Valley	.....	Unclassifiable/Attainment.		
Hunterdon County				
Sussex County				
Warren County				

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 97–17476 Filed 7–2–97; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5851–8]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Southside Sanitary Landfill Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Southside Sanitary Landfill Site in Indiana from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. This action is being taken by EPA and the State of Indiana, because it has been determined that Responsible Parties have implemented all appropriate response actions required. Moreover, EPA and the State of Indiana have determined that remedial actions conducted at the site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: July 3, 1997.

FOR FURTHER INFORMATION CONTACT: Dion Novak at (312) 886–4737 (SR–6J), Remedial Project Manager or Gladys Beard at (312) 886–7253, Associate Remedial Project Manager, Superfund Division, U.S. EPA—Region V, 77 West Jackson Blvd., Chicago, IL 60604. Information on the site is available at the local information repository located at: The Indianapolis Public Library, 40 East St. Clair Street, Indianapolis, IN 46204 and the Indiana Department of Environmental Management (IDEM), Office of Environmental Response, 2525 North Shadeland Avenue, (2nd Floor), Indianapolis, IN 46219. Requests for comprehensive copies of documents should be directed formally to the Regional Docket Office. The contact for the Regional Docket Office is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Southside Sanitary Landfill Site located in Indianapolis, Indiana. A Notice of Intent to Delete for this site was published May 14, 1997 (62 FR 26463). The closing date for comments on the Notice of Intent to Delete was June 12, 1997. EPA received no comments and therefore no Responsiveness Summary was prepared.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: June 20, 1997.

David Ullrich,

Acting Regional Administrator, U.S. EPA, Region V.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the Site ''Southside Sanitary Landfill, Indianapolis, Indiana''.

[FR Doc. 97–17186 Filed 7–2–97; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 96–149; FCC 97–142]

Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Second Report and Order in CC Docket No. 96–149 and Third Report and Order in CC Docket No. 96–61 (Order) addresses issues concerning market definition, the regulatory treatment of Bell Operating Companies' (BOCs) and independent local exchange carriers' (LECs) provision of in-region long distance and international services, and separation requirements for the BOCs' and independent LECs' provision of out-of-region long distance services. This action taken by the Commission will further the pro-competitive, deregulatory objectives of the Telecommunications Act of 1996 (1996 Act) by eliminating unnecessary regulation that is currently imposed on BOCs and, in certain circumstances, on independent LECs.

EFFECTIVE DATE: This final rule, which contains information collection requirements, shall become effective September 11, 1997, following OMB approval, unless FCC publishes a timely document in the **Federal Register** changing the effective date of the rule.

FOR FURTHER INFORMATION CONTACT: Katherine Schroder, Attorney, Policy and Program Planning Division, Common Carrier Bureau, (202) 418–1580. For additional information concerning the information collections contained in this Order contact Dorothy Conway at (202) 418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted April 17, 1997, and released April 18, 1997, as modified by Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area; Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket Nos. 96–149, 96–61, Order on Reconsideration, FCC 97–229 (released June 26, 1997) (Reconsideration Order).

In the Reconsideration Order, the Commission makes the following minor modifications to the Order to clarify language and make minor corrections: (1) The Commission makes minor modifications to paragraphs 173 and

188 of the Order to correct and clarify the meaning of these paragraphs; (2) the Commission amends 47 CFR 64.1903(c) adopted in the Order so that it is consistent with the text of the Order; (3) the Commission amends paragraph 226 of the Final Regulatory Analysis in the Order to be consistent with the changes made to paragraph 173; (4) the Commission extends the effective date of the Order in the ordering clauses to comply with the requirements of the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995); (5) in the ordering clauses and rules, the Commission redesignates subpart Q to subpart T in part 64 of title 47 of the Code of Federal Regulations; and (6) the Commission modifies the rules published in Appendix B of the Order to correct minor typographical and numbering errors.

The full text of the Order (as released on April 18, 1997) and the Reconsideration Order is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., N.W., Room 239, Washington, D.C. The complete text of the Order (as released on April 18, 1997) may also be obtained through the World Wide Web at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc97–142.wp, and the complete text of the Reconsideration Order may be obtained through the World Wide Web at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc97–229.wp. The complete text of the Order (as released on April 18, 1997) and the Reconsideration Order may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., N.W., Suite 140, Washington, D.C. 20037.

This Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding. The Commission inadvertently omitted specifically including the collections and their burdens in the PRA portion of the notice of proposed rulemaking in CC Docket No. 96–149 (61 FR 39397 (July 29, 1996)).

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, this Order contains a Final Regulatory Flexibility Analysis which is set forth in Section VI. The Commission performed a comprehensive analysis of the Order with regard to small entities and small incumbent LECs. This analysis includes: (1) A statement of the need for and objectives of this Order and the regulations contained within; (2) a summary and analysis of the significant issues raised in response to the initial regulatory flexibility analysis; (3) description and estimates of the number of small entities and small incumbent LECs affected by this Order; (4) summary analysis of the projected reporting, recordkeeping, and other compliance requirements; and (5) description of the steps taken by the Commission to minimize the significant economic impact of this Order on small entities and small incumbent LECs, including the significant alternatives considered and rejected.

The regulations adopted in this Order are necessary to implement the provisions of the 1996 Act.

Paperwork Reduction Act

This Order contains new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collections contained in this Order, as required by the Paperwork Reduction Act of 1995, Public Law 104–12. Written comments by the public on the information collections are due August 4, 1997. OMB notification of action is due September 2, 1997. Comments should address: (a) Whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: None.

Title: Separate Affiliate Requirement for Independent Local Exchange Carrier (LEC) Provision of International, Interexchange Services (47 CFR 64.1901–64.1903).

Form NO.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Public reporting burden for the collection of information is estimated as follows:

Information collection	No. of respondents (approx.)	Annual hour burden per response
Maintaining books of account of independent LEC's international, interexchange affiliate separate from LEC's local exchange and other activities	Approximately 10.	6,056

Total annual Burden: 60,560 burden hours for all respondents.

Estimated Costs Per Respondent: $100,300.

Needs and Uses: The Commission imposes the recordkeeping collection to ensure that independent LECs providing international, interexchange services through a separate affiliate are in compliance with the Communications Act, as amended, and with Commission policies and regulations.

Synopsis of Order

I. Introduction

1. In February 1996, the ''Telecommunications Act of 1996'' became law. Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56 (1996 Act), codified at 47 U.S.C. §§ 151 *et seq.* (Hereinafter, all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code.) The 1996 Act amended the Communications Act of 1934 (Communications Act). The intent of this legislation is ''to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.'' In this rulemaking and related proceedings, the Commission is adopting policies necessary to achieve the pro-competitive, deregulatory goals of the 1996 Act.

2.Upon enactment, the 1996 Act permitted the Bell Operating Companies (BOCs) (for purposes of this proceeding, we adopt the definition of the term ''Bell Operating Company'' contained in 47 U.S.C. § 153(4)) to provide interLATA services that originate outside of their regions. *See* 47 U.S.C. § 271(b)(2). The Modification of Final Judgment (MFJ), which ended the government's antitrust suit against AT&T, and which resulted in the divestiture of the BOCs from AT&T,

prohibited the BOCs from providing interLATA services. *See United States* v. *Western Elec. Co.*, 552 F. Supp. 131, 214 n.316 (D.D.C. 1982); *United States* v. *Western Elec. Co.*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983); *see also United States* v. *Western Elec. Co.*, Civil Action No. 82–0192 (D.D.C. Apr. 11, 1996) (vacating the MFJ). For purposes of this proceeding, we adopt the definition of the term ''in-region state'' that is contained in 47 U.S.C. § 271(i)(1). We note that section 271(j) provides that a BOC's in-region services include 800 service, private line service, or their equivalents that terminate in an in-region state of that BOC and that allow the called party to determine the interLATA carrier, even if such services originate out-of-region. *Id.* § 271(j). The 1996 Act defines ''interLATA services'' as ''telecommunications between a point located in a local access and transport area and a point located outside such area.'' 47 U.S.C. § 153(21). Under the 1996 Act, a ''local access and transport area'' (LATA) is ''a contiguous geographic area (A) established before the date of enactment of the (1996 Act) by a (BOC) such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or (B) established or modified by a (BOC) after such date of enactment and approved by the Commission.'' 47 U.S.C. § 153(25). LATAs were created as part of the MFJ's ''plan of reorganization.'' *United States* v. *Western Elec. Co.*, 569 F. Supp. 1057 (D.D.C. 1983), *aff'd sub nom. California* v. *United States*, 464 U.S. 1013 (1983). Pursuant to the MFJ, ''all BOC territory in the continental United States [was] divided into LATAs, generally centering upon a city or other identifiable community of interest.'' *United States* v. *Western Elec. Co.*, 569 F. Supp. 990, 993 (D.D.C. 1983). On March 25, 1996, the Commission released a Notice of Proposed Rulemaking (61 FR 14717 (April 3, 1996) initiating a review of its regulation of interstate, domestic, interexchange telecommunications services in light of the passage of the 1996 Act and the increasing competition in the interexchange market over the past decade. Among other things, the Commission asked whether it should modify or eliminate the separation requirements imposed on independent local exchange carriers (LECs) (exchange telephone companies other than the BOCs) as a condition for non-dominant treatment of their interstate, domestic, interexchange services originating outside their local exchange areas. We use the term ''independent LECs'' to refer to both the independent LECs and their affiliates. The Commission also sought comment on whether, if it modifies or eliminates these separation requirements for independent LECs, it should apply the same requirements to BOC provision of out-of-region interstate, domestic, interexchange services. In a recent order addressing BOC provision of interLATA services originating out-of-region, we considered whether, on an interim basis, BOC provision of out-of-region services should remain subject to dominant carrier regulation. *See* Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services, (61 FR 35964 (July 9, 1996)) (Interim BOC Out-of-Region Order) recon. pending. We concluded, *inter alia*, that, on an interim basis, if a BOC provides out-of-region domestic, interstate, interexchange services offered through an affiliate that satisfies the separation requirements imposed on independent LECs in the Competitive Carrier Fifth Report and Order (49 FR 34824 (September 4, 1984)), we would remove dominant carrier regulation for such services. *Id.* at ¶ 2.

Thus, we currently apply the same regulatory treatment to the BOCs' provision of out-of-region, domestic, interstate, interexchange services as we apply to the independent LECs' provision of those services. The Commission also proposed to revise the relevant product and geographic market definitions for purposes of determining whether a carrier should be regulated as dominant or non-dominant in the provision of interstate, domestic, interexchange services. Interexchange NPRM at ¶¶ 41–42. In the Interexchange NPRM, the Commission also raised issues relating to: implementation of the rate averaging and rate integration requirements in section 254(g) of the Communications Act; detariffing for domestic services of non-dominant interexchange carriers; and the current prohibition against bundling customer services equipment with the provision of interstate, interexchange services by non-dominant interexchange carriers. On August 7, 1996, we issued a Report and Order implementing the rate averaging and rate integration requirements. *See* Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended (61 FR 42558 (August 16, 1996)) (Rate Integration Order). On October 31, 1996, we issued a Second Report and Order which eliminates § 203 tariff filing requirements for interstate, domestic, interexchange services by nondominant interexchange carriers and orders all nondominant interexchange carriers to cancel their tariffs for those services within nine months from the effective date of the Order. Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934 (61 FR 59340 (November 22, 1996)) (Tariff Forbearance Order), stayed pending judicial review, *MCI Telecom. Corp.* v. *FCC*, No. 96–1459 (D.C. Cir. Feb. 13, 1997). *See also* Policy and Rules Concerning the Interstate, Interexchange Marketplace: Guidance Concerning Implementation as a Result of the Stay Order of the U.S. Court of Appeals for the D.C. Circuit, CC Docket No. 96–61, Public Notice, DA 97–493 (rel. March 6, 1997). In the Tariff Forbearance Order, we stated our intent to issue a Further Notice of Proposed Rulemaking that will address the continued applicability of the prohibitions against the bundling of both CPE and enhanced services with interstate, interexchange services by non-dominant interexchange carriers. *Id.* at ¶ 118.

3. The 1996 Act conditions the BOCs' entry into in-region, interLATA service on their compliance with certain provisions of section 271 of the Act. Under section 271, we must determine, among other things, whether the BOC has complied with the safeguards imposed by section 272 and our rules promulgated thereunder. 47 U.S.C. § 271(d)(3)(B). The Commission also must find that the interconnection agreements or statements approved by the appropriate state commission under section 252 satisfy the competitive checklist contained in section 271(c)(2)(B), and that the BOC's entry into the in-region interLATA market is ''consistent with the public interest, convenience and necessity.'' *Id.* §§ 271(d)(3)(A), (d)(3)(C). For purposes of section 271, such interconnection agreements must be made with a facilities-based competitor that meets specified criteria. *Id.* § 271(c)(1)(A). In acting on a BOC's application for authority to provide in-region interLATA services, the Commission must consult with the Attorney General and give substantial weight to the Attorney General's evaluation of the BOC's application. *Id.* § 271(d)(2)(A). In addition, the Commission must consult with the applicable state commission to verify that the BOC complies with the requirements of section 271(c). *Id.* § 271(d)(2)(B). Section 272 requires,

among other things, that a BOC provide in-region, interLATA service through a separate affiliate that meets the requirements of section 272(b).

4. On July 18, 1996, we released a Notice of Proposed Rulemaking (61 FR 39397 (July 29, 1996)) in which we sought comment on the non-accounting separate affiliate and nondiscrimination safeguards in section 272. We also sought comment on whether we should alter the dominant carrier classification that under our current rules would apply to in-region, interstate, domestic, interLATA services provided by the BOCs' section 272 interLATA affiliates (BOC interLATA affiliates). For convenience, we use the term ''BOC interLATA affiliates'' to refer to the separate affiliates established by the BOCs, in conformance with section 272(a)(1), to provide in-region, interLATA services. Although we referred to these affiliates as ''BOC affiliates'' in the NPRM, our findings in this Order apply only to affiliates established in conformance with section 272(a)(1). Further, we sought comment on whether we should modify our existing rules for regulating the provision of in-region, interstate, domestic, interexchange services by an independent LEC. For purposes of this proceeding, we have defined an independent LEC's ''in-region services'' as telecommunications services originating in the independent LEC's local exchange areas or 800 service, private line service, or their equivalents that: (1) Terminate in the independent LEC's local exchange areas, and (2) allow the called party to determine the interexchange carrier, even if the service originates outside the independent LEC's local exchange areas. *Id*. at ¶ 4 n.12 Finally, we invited comment on whether we should apply the same regulatory treatment to the BOC interLATA affiliates' and independent LECs' provision of in-region, international services that we apply to their provision of in-region, interstate, domestic, interLATA services and in-region, interstate, domestic interexchange services, respectively. We recently adopted rules to implement the section 272 non-accounting separate affiliate and nondiscrimination safeguards. On the same day, we adopted rules to implement the accounting safeguards in sections 260 and 271 through 276.

5. This Order addresses the market definition and dominant/non-dominant classification issues raised in the Interexchange NPRM and the Non-Accounting Safeguards NPRM. With respect to market definition, we adopt the approach proposed in the NPRMs. Specifically, we revise our current product and geographic market definitions in accordance with the 1992 Merger Guidelines. We conclude that we should define as a relevant product market any interstate, domestic, long distance service for which there are no close substitutes, or a group of services that are close demand substitutes (Demand substitutability identifies all of the products or services that consumers view as substitutes for each other, in response to changes in price. For example, if, in response to a price increase for orange juice, consumers instead purchase apple juice, apple juice would be considered a demand substitute for orange juice.) for each other, but for which there are no other close demand substitutes. In places where we use the term ''long distance services,'' we mean interstate, domestic or international, interLATA services provided by the BOC interLATA affiliates and interstate, domestic or international, interexchange services provided by independent LECs, respectively. We define the relevant geographic market for interstate, domestic, long distance services as all possible routes that allow for a connection from one particular location to another particular location (i.e., a point-to-point market). We conclude, however, that when a group of point-to-point markets exhibit sufficiently similar competitive characteristics (*i.e.*, market structure), we can aggregate such markets, rather than examine each individual point-to-point market separately. Therefore, if we conclude that the conditions for a particular service in any point-to-point market are sufficiently representative of the conditions for that service in all other domestic point-to-point markets, then we will examine aggregate data, rather than data particular to each domestic point-to-point market. With respect to the BOC interLATA affiliates and independent LECs, however, we conclude that we should analyze point-to-point markets that originate in-region separately from those point-to-point markets that originate out-of-region to determine whether the BOC affiliates' or independent LECs' market power in local exchange and exchange access services results in market power in the interexchange market. We note that, in some cases, it may be necessary to focus specifically on the termination point because the local exchange carrier that serves the end-user customer will necessarily have market power with regard to that customer.

6. We also conclude that a BOC interLATA affiliate should be classified as dominant only if we find that it has the ability profitably to raise and sustain prices of in-region, interstate, domestic, interLATA services significantly above competitive levels by restricting its own output. Dominant carriers are subject to more stringent regulation than non-dominant carriers, including price cap regulation, when specified by Commission order, and tariff filing notice periods of 14, 25 or 120 days. *See supra* ¶ 12 for more detail on the regulatory distinctions between dominant and non-dominant interexchange carriers. In light of the requirements established by, and pursuant to, sections 271 and 272, together with other existing Commission rules, we conclude that the BOCs will not be able to use, or leverage, their market power in the local exchange or exchange access markets to such an extent that their section 272 interLATA affiliates could profitably raise and sustain prices of in-region, interstate, domestic, interLATA services significantly above competitive levels by restricting the affiliate's own output. We also conclude that regulating BOC in-region interLATA affiliates as dominant carriers generally would not help to prevent improper allocations of costs, discrimination by the BOCs against rivals of their interLATA affiliates, or price squeezes by the BOCs or the BOC interLATA affiliates. Although certain aspects of dominant carrier regulation may address these concerns, we conclude that the burdens they would impose on competition, competitors, and the Commission outweigh any potential benefits. As a result, we classify the BOC interLATA affiliates as non-dominant in the provision of in-region, interstate, domestic, interLATA services.

7. We also classify the independent LECs as non-dominant in the provision of in-region, interstate, domestic, interexchange services, because the independent LECs do not have the ability profitably to raise and sustain prices of in-region, interstate, domestic, interexchange services above competitive levels by restricting their own output of these services. We conclude, however, that the independent LECs' control of local exchange and exchange access facilities potentially enables them to misallocate costs from their in-region, interexchange services, discriminate against rivals of their interLATA affiliates, and engage in other anticompetitive conduct. We therefore require the independent LECs to provide their in-region, interstate, domestic, interexchange services through separate affiliates that satisfy

the separation requirements adopted in the Competitive Carrier Fifth Report and Order, ¶ 9 (1984). Nevertheless, we give companies providing in-region, interexchange services on an integrated basis one year from the date of release of this order to comply with the Competitive Carrier Fifth Report and Order separation requirements. *See infra* section II.B.

8. In addition, we adopt the same regulatory treatment of the BOC interLATA affiliates' and independent LECs' provision of in-region, international services, as we adopt for their provision of in-region, interstate, domestic, interLATA and in-region, interstate, domestic, interexchange services, respectively. Accordingly, we will classify each BOC interLATA affiliate or independent LEC affiliate as non-dominant in the provision of in-region, international services, unless it (or its parent) is affiliated within the meaning of § 63.18(h)(1)(i) of the rules, with a foreign carrier that has the ability to discriminate against rivals of its U.S. affiliate through control of bottleneck services or facilities in a foreign market. In that case, we will apply section 63.10(a) of the rules to determine whether to regulate the BOC interLATA affiliate or independent LEC affiliate as a dominant carrier in its provision of service between the United States and that foreign market. In doing so, we emphasize that there is more than one basis for finding a U.S. carrier dominant in the provision of international services. The separate issue of whether a BOC interLATA affiliate, an independent LEC affiliate, or any other U.S. carrier should be regulated as dominant in the provision of international services because of the market power of an affiliated foreign carrier in a foreign destination market was addressed by the Commission last year in the Foreign Carrier Entry Order. Market Entry and Regulation of Foreign-affiliated Entities (60 FR 67332 (December 29, 1995)) (Foreign Carrier Entry Order), recon. pending. See also Regulation of International Common Carrier Services (57 FR 57964 (December 8, 1992)) ¶¶ 19–24 (1992) (International Services Order). The Foreign Carrier Entry Order maintained a separate framework adopted in the International Services Order for regulating U.S. international carriers (including BOCs or independent LECs ultimately authorized to provide in-region international services) as dominant on routes where an affiliated foreign carrier has the ability to discriminate in favor of its U.S. affiliate through control of bottleneck services or facilities in the foreign destination market. No carriers are exempt from this policy to the extent they have foreign affiliations. Section 63.10(a) of the Commission's rules provides that: (1) carriers having no affiliation with a foreign carrier in the destination market are presumptively non-dominant for that route; (2) carriers affiliated with a foreign carrier that is a monopoly in the destination market are presumptively dominant for that route; (3) carriers affiliated with a foreign carrier that is not a monopoly on that route receive closer scrutiny by the Commission; and (4) carriers that serve an affiliated destination market solely through the resale of an unaffiliated U.S. facilities-based carrier's switched services are presumptively non-dominant for that route. We will require the independent LECs to provide in-region international services through separate affiliates that satisfy the Competitive Carrier Fifth Report and Order separation requirements, consistent with the requirements we apply to their provision of in-region, interstate, domestic, interexchange services. In the Non-Accounting Safeguards Order, we concluded that the section 272 safeguards apply to the BOCs' provision of in-region, international services. Non-Accounting Safeguards Order at ¶ 58.

9. Finally, we consider whether we should modify or eliminate the separation requirements imposed on the BOCs and independent LECs as a condition for non-dominant treatment of their provision of out-of-region interstate, domestic, interexchange services. We conclude that those requirements are unnecessary, and we therefore eliminate the separation requirements as a condition for non-dominant treatment of the BOCs' and independent LECs' provision of out-of-region, interstate, domestic, interexchange services.

10. The actions we take in this proceeding will further the pro-competitive, deregulatory objectives of the 1996 Act by eliminating unnecessary regulation that is currently imposed on interexchange carriers affiliated with BOCs and independent LECs. Although we are classifying these carriers as non-dominant with respect to their provision of in-region and out-of-region long distance services, as summarized above, we recognize that, as long as these carriers retain market power in providing local exchange and exchange access services, they will have some incentive and ability to misallocate costs to local exchange and exchange access services, to discriminate against their long distance competitors, and to engage in other anticompetitive conduct. We conclude, however, that the regulatory structure we adopt today will continue the process of enhancing competition in all telecommunications markets as envisioned by the 1996 Act.

II. Background

11. Between 1979 and 1985, the Commission conducted the Competitive Carrier proceeding, in which it examined how its regulations should be adapted to reflect and promote increasing competition in telecommunications markets. In a series of orders, the Commission distinguished between two kinds of carriers—those with market power (dominant carriers) and those without market power (non-dominant carriers). In the Competitive Carrier Fourth Report and Order (48 FR 52452 (November 18, 1983)), the Commission defined market power alternatively as ''the ability to raise prices by restricting output'' and as ''the ability to raise and maintain price above the competitive level without driving away so many customers as to make the increase unprofitable.'' The 1992 Department of Justice/Federal Trade Commission Merger Guidelines similarly define market power as ''the ability profitably to maintain prices above competitive levels for a significant period of time.'' 1992 Merger Guidelines, at 20,570. The Commission recognized that, in order to assess whether a carrier possesses market power, one must first define the relevant product and geographic markets. In the Competitive Carrier proceeding, the Commission relaxed its tariff filing and facilities authorization requirements for non-dominant carriers and focused its regulatory efforts on constraining the ability of dominant carriers to exercise market power.

12. Our rules define a dominant carrier as one that possesses market power, and a non-dominant carrier as a carrier not found to be dominant (i.e., one that does not possess market power). Under our rules, non-dominant carriers are not subject to rate regulation, and currently may file tariffs that are presumed lawful on one day's notice and without cost support. Tariff Filing Requirements for Nondominant Carriers (60 FR 52865 (October 11, 1995)). As previously discussed, we adopted mandatory detariffing for nondominant interexchange carriers in the Tariff Forbearance Order, but that Order has been stayed pending judicial review. *See supra* n. 8. Non-dominant carriers are also subject to streamlined section 214 requirements. In contrast, dominant interexchange carriers are subject to price cap regulation, when

specified by Commission order, and must file tariffs on 14, 45, or 120 days' notice, with cost support data for above-cap and out-of-band tariff filings, and with additional information for new service offerings. We note that effective February 1997, a local exchange carrier may file with the Commission a new or revised charge, classification, regulation, or practice on a streamlined basis. Unless the Commission takes action under 47 U.S.C. § 204(a)(1), any charge, classification, regulation, or practice shall be deemed lawful and shall be effective 7 days (in the case of a rate reduction) or 15 days (in the case of a rate increase) after the date on which it is filed with the Commission. 47 U.S.C. § 204(a)(3). See also Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996 (62 FR 5757 (February 7, 1997)). Dominant domestic carriers must also obtain specific prior Commission approval to construct a new line or to acquire, lease or operate any line, as well as to discontinue, reduce, or impair service. We note that the Commission has simplified this process to permit a carrier to file an annual ''blanket'' Section 214 application for all construction planned for the year. *See id.* § 63.06. Moreover, pursuant to section 402(b)(2)(A) of the 1996 Act, the Commission is required to ''permit any common carrier . . . to be exempt from the requirements of Section 214 of the 1934 Act for the extension of any line.'' We are addressing the implementation of section 402(b)(2)(A), including the issue of what constitutes an ''extension of any line,'' in a separate proceeding. See Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996 (62 FR 4965 (February 3, 1997)). Finally, we note that the Commission has eliminated prior approval requirements to add, modify, or delete circuits on authorized international routes as they apply to U.S. international carriers that are regulated as dominant for reasons other than having foreign carrier affiliations. In addition, such dominant carriers are required to obtain prior Commission approval to discontinue, reduce, or impair service on a particular route and notify the Commission of the conveyance of international cable capacity. See Streamlining the International Section 214 Authorization Process and Tariff Requirements (61 FR 15724 (April 9, 1996)), ¶¶ 50, 77, 80–81 (Streamlining Order).

13. In the Competitive Carrier First Report and Order (45 FR 76148 (November 18, 1980)), the Commission classified LECs and pre-divestiture AT&T as dominant, with respect to both local exchange and interstate long distance services, and therefore subject to the ''full panoply'' of then-existing Title II regulation. In light of increasing competition in the interstate, domestic, interexchange telecommunications market, and evidence that AT&T no longer possessed the ability to control price unilaterally, the Commission reclassified AT&T as a non-dominant carrier in that market. Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, Order, 11 FCC Rcd 3271 (1996) (AT&T Reclassification Order), recon. pending. In contrast, the Commission classified MCI, Sprint, and other ''specialized common carriers'' as non-dominant carriers.

14. In the Competitive Carrier Fourth Report and Order, the Commission determined that interexchange carriers affiliated with independent LECs would be regulated as non-dominant interexchange carriers. In the Competitive Carrier Fifth Report and Order, the Commission clarified that an ''affiliate'' of an independent LEC was ''a carrier that is owned (in whole or in part) or controlled by, or under common ownership (in whole or in part) or control with, an exchange telephone company.'' The Commission further clarified that, in order to qualify for non-dominant treatment, the affiliate providing interstate, interexchange services must: (1) Maintain separate books of account; (2) not jointly own transmission or switching facilities with its affiliated exchange telephone company; and (3) acquire any services from its affiliated exchange telephone company at tariffed rates, terms and conditions. Competitive Carrier Fifth Report and Order, 98 FCC 2d at 1198, ¶ 9. The Commission noted that ''[a]n affiliate qualifying for nondominant treatment is not necessarily structurally separated from an exchange telephone company in the sense ordered in the Second Computer Inquiry. . . .'' The Commission added that any interstate, interexchange services offered directly by an independent LEC (rather than through a separate affiliate) or through an affiliate that did not satisfy the specified conditions would be subject to dominant carrier regulation.

15. In the Competitive Carrier Fifth Report and Order, the Commission also addressed the possible entry of the BOCs into interstate, interLATA services in the future:

> The BOCs currently are barred by the [MFJ] from providing interLATA services. . . . If this bar is lifted in the future, we would regulate the BOCs' interstate, interLATA services as dominant until we determined what degree of separation, if any, would be necessary for the BOCs or their affiliates to qualify for nondominant regulation.

In this Order, we revisit the question of the appropriate regulatory treatment of BOCs and independent LECs in the provision of long distance services.

III. Market Definition

A. General Application

1. Background

16. In order to determine that a particular carrier or group of carriers possesses market power, (The 1992 Merger Guidelines define market power as ''the ability profitably to maintain prices above competitive levels for a significant period of time.'' 1992 Merger Guidelines at 20,570–71. ''Sellers with market power also may lessen competition on dimensions other than price, such as product quality, service, or innovation.'' *Id.* at 20,571, note 6.) it is first necessary to define the relevant product and geographic markets. In the Competitive Carrier proceeding, the Commission found, for purposes of assessing the market power of interexchange carriers, that: ''(1) Interstate, domestic, interexchange telecommunications services comprise the relevant product market, and (2) the United States (including Alaska, Hawaii, Puerto Rico, U.S. Virgin Islands, and other U.S. offshore points) comprises the relevant geographic market for this product, with no other relevant submarkets.'' In the Interexchange NPRM, the Commission proposed to reexamine and refine the market definitions adopted in the Competitive Carrier proceeding. In the Non-Accounting Safeguards NPRM, the Commission proposed to apply this new approach to market definition in assessing the market power of BOC interLATA affiliates and independent LECs in their provision of interstate, domestic, long distance services.

17. In the Interexchange NPRM, the Commission asked whether it should adopt more sharply focused market definitions than those adopted in the Competitive Carrier proceeding to provide us with a more refined analytical tool for evaluating market power. To establish a more narrowly-focused approach that more accurately reflects the realities of the marketplace and is flexible enough to accommodate unique market situations, the Commission tentatively concluded that it should follow the approach for defining relevant markets contained in the 1992 Merger Guidelines. As the Commission noted in the Interexchange NPRM, the market definition approach taken in the 1992 Merger Guidelines has been recognized increasingly by courts

and scholars as an important tool in assessing market power.

2. Comments

18. Several commenters agree with our proposal to reexamine the product and geographic market definitions adopted in the Competitive Carrier proceeding. Some emphasize that redefining the market would aid in determining whether BOC interLATA affiliates and independent LECs possess market power with respect to their provision of long distance services. Other commenters recognize the more general benefit in providing the Commission with a more refined and flexible analytical tool to evaluate whether any carrier possesses market power in the long distance marketplace.

19. Although it generally supports a reexamination of the relevant market definitions, Sprint argues that it is not readily apparent whether more particularized definitions would represent an improvement over the broader definitions adopted in the Competitive Carrier proceeding. Sprint urges the Commission to continue to use the definitions adopted in the Competitive Carrier proceeding and to examine the issue, in light of the 1992 Merger Guidelines, on a case-by-case basis only.

20. In general, the BOCs oppose the Commission's proposal to redefine the product and geographic markets adopted in the Competitive Carrier proceeding. They argue that BOC entry into interLATA services should not serve as a basis to reconsider the relevant market definitions and that it would be unreasonable to isolate portions of the national market to analyze the market power of new entrants when a single national market has been used to assess the market power of incumbent interexchange carriers. BellSouth cautions that any change in the market definitions will also require the Commission to reconsider previous decisions based on the existing definitions. SBC and U S West assert that the fast-changing telecommunications marketplace may render modifications in the market definitions quickly obsolete. SBC claims that the 1992 Merger Guidelines were never intended to serve as a basis for determining whether or how to regulate a market or to establish a rationale for disparate regulation of market participants. USTA argues that a market definition based only on demand conditions, omitting supply factors and competitive conditions, could result in an inaccurate finding of significant market power.

21. Although Ameritech does not disagree with the Commission's proposal to use the 1992 Merger Guidelines to define relevant markets, it claims that it would be impractical and unnecessary to define each and every product and geographic market. If the Commission adopts its proposed approach, however, Ameritech asks that the Commission clarify that the 1992 Merger Guidelines will be used to assess market power for other services, including interstate access services.

22. AT&T argues that the definitions adopted in the Competitive Carrier proceeding are appropriate for determining whether carriers, other than those that control the local bottleneck, possess market power in interexchange services because supply substitutability and the widespread pervasiveness of ubiquitous calling plans demonstrate that there is a single, national market for such services. AT&T emphasizes that the 1992 Merger Guidelines provide support for the existing market definitions, rather than the Commission's proposed new approach, because the 1992 Merger Guidelines recognize the importance of supply substitutability in defining relevant markets and advocate aggregate market descriptions where production substitution among a group of products is nearly universal among the firms selling one or more of those products, as is the case in the telecommunications industry.

23. The Department of Justice (DOJ) contends that it is not necessary for the Commission to adopt a precise definition of the relevant markets involved in the provision of a BOC interLATA affiliate's interLATA services and that the Commission should refrain from doing so at this time. To the extent the Commission chooses to define markets in this proceeding, however, DOJ urges the Commission to be mindful of the different objectives of defining markets for purposes of regulation and antitrust enforcement. DOJ asserts that, while the approach proposed by the Commission in the Interexchange NPRM for defining relevant markets is ''not unreasonable,'' changes in the telecommunications industry may require the Commission to define markets more precisely in the future and that it may be inappropriate to address this issue at this time. DOJ Aug. 30, 1996 Reply at 20. Although DOJ, like AT&T, believes that the market definition is irrelevant in assessing the market power of BOC interLATA affiliates, its conclusion is based on its assessment that the BOC interLATA affiliates will not be able to exercise, at least in the near term, the type of market power targeted by dominant carrier regulation. *Id.* at 16–17.

24. MFS argues that the 1992 Merger Guidelines are too generic to apply to the telecommunications industry and should not be used to redefine the appropriate product and geographic markets. MFS argues, for example, that while the 1992 Merger Guidelines contemplate industries in which goods are substitutable, the telecommunications services market is made up of services that are not substitutes, but rather essential inputs used by competitors. In addition, MFS claims that the 1992 Merger Guidelines are not well-suited to highly segmented industries, such as the telecommunications industry, which is segmented into residential, business, peak, off-peak, local, toll and access services. This market segmentation, MFS claims, makes it possible for dominant firms to engage in predatory cross-subsidization between market segments. MFS further contends that, while the 1992 Merger Guidelines focus on geographic factors and pricing issues, measuring market power in the telecommunications industry requires consideration of such non-pricing issues as physical collocation, interconnection, and the allocation of telephone numbers. Finally, MFS argues that the focus on demand substitutability in the 1992 Merger Guidelines results in an inaccurate measurement of market power in the telecommunications industry because the monopolists or near-monopolists that control the local exchange and exchange access market may foreclose competition by raising the price of an essential facility they provide to competitors without also raising the price of the service they sell to end-users.

3. Discussion

25. We conclude that the 1992 Merger Guidelines provide an appropriate analytical framework for defining relevant markets in order to assess market power in the interstate, domestic, long distance marketplace. We disagree with those commenters that claim that the 1992 Merger Guidelines are inapplicable in a regulatory setting or are based on generalized market concepts that are inapplicable to the telecommunications industry. We find that the 1992 Merger Guidelines are based on fundamental and widely-applicable economic principles, such as principles of demand and supply substitution. Supply substitutability identifies all productive capacity that can be used to produce a particular good, whether it is currently being used to produce that good or to produce some

other, even unrelated, good. For example, if a factory that is producing desks could be converted quickly and inexpensively to the production of wheelbarrows, then the owner of that factory should be considered a potential producer of wheelbarrows. That does not mean, however, that desks and wheelbarrows are in the same relevant product market. As previously noted, demand substitutability identifies all of the products or services that consumers view as substitutes for each other, in response to changes in price. For example, if, in response to a price increase for orange juice, consumers instead purchase apple juice, apple juice would be considered a demand substitute for orange juice. Accordingly, we reject MFS's contention that the telecommunications industry is so unique that the 1992 Merger Guidelines are inapplicable. MFS's concern that, by relying on the 1992 Merger Guidelines, the Commission will only consider demand-based factors in assessing market power is unfounded. As discussed *supra,* although we will rely on demand substitutability in defining relevant markets, market definition is only one component in assessing market power. The 1992 Merger Guidelines are intended to guide DOJ and the FTC in their analysis of mergers taking place in any industry, not only mergers in particular industries.'' These guidelines outline the present enforcement policy of the Department of Justice and the Federal Trade Commission (the ''Agency'') concerning horizontal acquisitions and mergers (''mergers'') subject to section 7 of the Clayton Act, to section 1 of the Sherman Act, or to section 5 of the FTC Act.'' 1992 Merger Guidelines at p. 20,569–3. The economic principles contained in the 1992 Merger Guidelines are not limited to an analysis of particular types of markets, but rather are broadly drawn to accommodate virtually all marketplace characteristics.We note that there is a recognition in the 1992 Merger Guidelines that they will be applied to ''a broad range of possible factual circumstances.'' 1992 Merger Guidelines at p. 20,569–3. In fact, DOJ agrees that ''[t]he Commission's market definition, like market definition under the antitrust laws, should be guided by the basic economic principles that inform competitive analysis and market definitions under the DOJ Merger Guidelines.'' We acknowledge that, in its comments, DOJ notes that the different objectives of regulation and antitrust enforcement may affect the application of the market definition in those contexts. We agree and realize that the markets defined in a particular antitrust suit may reach different results. DOJ does not argue, however, that the fundamental concepts and principles espoused in the 1992 Merger Guidelines apply only in the merger context.

26. We conclude that we should revise our product and geographic market definitions to follow the approach taken in the 1992 Merger Guidelines. Most commenters do not appear to articulate serious disagreements with the fundamental economic principles on which we base our revised approach to defining the relevant product and geographic markets. Rather, they appear to focus their concerns on the impact that this new approach may have on specific assessments of market power. We believe that our market power analysis, including our approach to defining the relevant product and geographic markets, should not be formulated by focusing on end-results, but instead should be focused on the application of sound economic principles and analysis. As a result, we conclude that the product and geographic market definitions defined in the Competitive Carrier proceeding should be refined to follow the approach taken in the 1992 Merger Guidelines in order to ensure that our market power assessments are based on the most accurate, up-to-date, and generally accepted economic principles relating to market analysis. As new carriers enter the long distance marketplace and as the telecommunications marketplace changes in the face of increased competition, the flexibility inherent in our new approach to defining the relevant product and geographic markets enables us to make a more accurate measurement of market power than before by accounting for unique carrier characteristics that could impact the dynamics of the marketplace. For example, potential new entrants to the long distance marketplace, such as BOCs, utility companies, and cable companies, possess different characteristics that could impact, *inter alia,* the types of services offered in the long distance marketplace and the method in which long distance services are priced. For example, many new carriers have begun entering the long distance market by targeting particular types of customers or by targeting customers in particular areas, suggesting that carriers do not view the interstate, domestic, long distance market as a single national market or as a single market of interchangeable and substitutable services.

27. In contrast to some commenters, we find that supply substitutability (As previously noted, supply substitutability identifies all productive capacity that can be used to produce a particular good, whether it is currently being used to produce that good or to produce some other, even unrelated, good.) should not be used to define relevant markets, but rather should be used to determine which providers are currently serving, or potentially could be serving, a relevant market only after that market has been identified. As the 1992 Merger Guidelines note, ''[o]nce defined, a relevant market must be measured in terms of its participants and concentration. Participants include firms currently producing or selling the market's products in the market's geographic area. In addition, participants may include other firms depending on their likely supply responses to a 'small but significant and nontransitory' price increase. A firm is viewed as a participant if, in response to a 'small but significant and nontransitory' price increase, it likely would enter rapidly into production or sale of a market product in the market's area, without incurring significant sunk costs of entry and exit. Firms likely to make any of these supply responses are considered to be 'uncommitted' entrants because their supply response would create new production or sale in the relevant market and because that production or sale could be quickly terminated without significant loss.'' 1992 Merger Guidelines at p. 20,572. We conclude that our market definitions should be based solely on demand substitutability considerations. As previously noted, demand substitutability identifies all of the products or services that consumers view as substitutes for each other, in response to changes in price. This conclusion accords with the 1992 Merger Guidelines, which state that, ''market definition focuses solely on demand substitution factors—i.e., possible consumer responses. Supply substitution factors—i.e., possible production responses—are considered elsewhere in the Guidelines in the identification of firms that participate in the relevant market and the analysis of entry.''

28. Under the 1992 Merger Guidelines, market power is determined by delineating both the product and geographic market in which power may be exercised and, then, identifying those firms that are current suppliers and those firms that are potential suppliers in that particular market. Therefore, in determining whether a carrier is able to

exercise market power in the provision of a particular service or group of services or within a particular area, we must consider two issues. First, in the case of the relevant product market, we must consider whether, if all carriers raised the price of a particular service or group of services, customers would be able to switch to a substitute service offered at a lower price. With respect to the relevant geographic market, we must consider whether, if all carriers in a specified area raised the price of a particular service or group of services, customers would be able to switch to the same service offered at a lower price in a different area. Second, with respect to supply substitutability, we must consider whether, if a carrier raised the price of a particular service or group of services, other carriers, currently not offering that service or group of services, would have the incentive and the ability to begin provisioning a substitute service quickly and easily. For example, if we were assessing the market power of a carrier providing long distance service from Miami, and determined that another carrier currently providing service in Los Angeles would also begin providing service from Miami if the price of the service in Miami were to increase, we would consider the impact of the Los Angeles carrier's potential entry into Miami in assessing the market power of the Miami carrier. This does not mean, however, that customers in Miami consider long distance service offered in Los Angeles as a substitute for service offered in Miami. Therefore, long distance service offered in Miami and long distance service offered in Los Angeles would not be considered as services in the same relevant geographic market. By following the approach taken in the 1992 Merger Guidelines, we will continue to weigh supply substitutability as an important factor in assessing market power, but we will not use it as a factor in defining the relevant product and geographic markets.

29. We acknowledge that the approach to defining relevant markets that we adopt in this proceeding departs from the approach adopted in the Competitive Carrier proceeding and applied in the AT&T Reclassification Order. For the reasons discussed herein, we believe these more refined definitions are now necessary. To the extent that various parties argue that our new approach is contrary to our decision in the AT&T Reclassification Order, it is well-established that the Commission may change approaches as long as it provides a reasoned explanation for doing so. Should any modifications be necessary to decisions reached in the AT&T Reclassification Order, they will be addressed, as necessary, in further proceedings. We emphasize, however, that, because market definition is only one step in assessing market power, changes made in the approach to defining relevant markets will not necessarily produce different assessments of market power.

30. We also reject the argument that we should not revise the product and geographic market definitions because of the dynamic changes taking place in the long distance marketplace. To the contrary, we believe that these changes in the long distance marketplace provide a compelling reason to modify our approach to defining the relevant product and geographic markets. Our new approach to defining relevant markets will be consistently applied, yet contain inherent flexibilities, so that our assessment of market power will always be based on a particular carrier's or group of carriers' unique market situation. For example, in recognition that certain carriers may control discrete facilities in specific geographic areas, target particular types of customers, or provide specialized services, our new market definitions allow us to examine the relevant product and geographic markets at the level of detail necessary to make a more accurate assessment of market power than under the Competitive Carrier definitions. We find that the definitions developed in the Competitive Carrier proceeding would not provide us with sufficient flexibility to account for the impact such unique market situations may have on assessing market power because these definitions are too broad to analyze markets at the necessary level of detail. At the time the Commission defined the relevant product and geographic markets in the Competitive Carrier proceeding, telecommunications services were provided primarily by a single national carrier. Under such a regulatory model, the use of a simplified definition of relevant markets did not significantly hinder our analysis of market power. Today, in light of the dramatic changes that have been occurring in the long distance marketplace, particularly those brought on by the passage of the Telecommunications Act of 1996, with many firms competing to provide more specialized and regionalized long distance services to different types of customers, more detailed market definitions are needed to assess market power more accurately and to pinpoint the particular markets where that power is or could be exercised.

B. Product Market Definition

1. General Approach to Product Market Definition

a. Background

31. In the Competitive Carrier proceeding, the Commission defined the relevant product market as ''all interstate, domestic, interexchange telecommunications services . . . with no relevant submarkets.'' In the Interexchange NPRM, we tentatively concluded that we should refine our analysis and define as a relevant product market any domestic, interstate, interexchange service for which there are no close demand substitutes or any group of services that are close substitutes for each other but for which there are no other close demand substitutes. Recognizing, however, that delineating all relevant product markets would be administratively burdensome and that the Commission has previously found that there is substantial competition with respect to most interstate, domestic, interexchange services, the Commission tentatively concluded that we generally should address the question of whether a specific domestic, interstate, interexchange service, or group of services, constitutes a separate product market only where there is credible evidence suggesting that there is or could be a lack of competitive performance with respect to a particular service or group of services. We asked commenters to evaluate this new approach and to suggest any other possible approaches.

b. Comments

32. Several commenters support the proposed approach to redefining the relevant product market. Many commenters agree that the Commission should rely on demand substitutability in defining relevant product markets. A number of commenters argue, however, that the Commission should continue to recognize supply substitutability in defining the relevant product market and, therefore, should not modify the relevant product market definition adopted in the Competitive Carrier proceeding.

33. GTE concedes that the definition proposed in the Interexchange NPRM would provide the Commission with the flexibility to accommodate a rapidly-evolving, technology-driven environment and would enable the Commission to assess a particular service provider's ability to exert market power over new products. GTE claims, however, that the certainty of the Commission's standard would diminish

if different market evaluations were applied to particular carriers or groups of carriers absent a relatively strong basis for distinguishing them. Although it generally supports the revised approach to defining the relevant product market, the Florida Public Service Commission warns that logical sets of substitutable services will likely intersect with one another, which could render the Commission's approach to defining relevant product markets unworkable in practice.

34. AT&T opposes the approach proposed in the Interexchange NPRM. It emphasizes that the 1992 Merger Guidelines support an aggregate product market definition where ''production substitution among a group of products is nearly universal among the firms selling one or more of the products,'' as in the telecommunications industry. AT&T claims that, due to pervasive supply substitutability, a product market defined by a single service would yield the same market share and market power results as the single product market approach adopted in the Competitive Carrier proceeding. Because there is no difference between the facilities used to provide different services, AT&T argues that there is ample capacity for carriers to attract customers from any carrier that attempts to exercise market power with respect to a particular service. AT&T further claims that the Commission's recent analysis of AT&T's 800 directory assistance and analog private line offerings provide no basis to abandon the single product market definition. AT&T contends that the Commission recognized that AT&T's pricing of 800 directory assistance is constrained by supply substitutability principles, and that the migration of analog private line customers to digital and virtual private line services demonstrates that these services are substitutable and, therefore, in the same market.

35. The BOCs generally oppose the product market definition proposed in the Interexchange NPRM. BellSouth supports retention of the current product market definition on the grounds that there is high cross-elasticity of demand among virtually all interexchange services, most of which are interchangeable services that are packaged differently, and that the distinctions between services can be easily erased by entities such as resellers. For example, BellSouth argues that, if a sole supplier of any particular interexchange service raised its prices by five percent or more, most customers would turn to a different service as an alternative. BellSouth disputes the Commission's suggestion that market power over discrete fringe services may warrant redefinition of the relevant product market. It further asserts that delineating relevant product markets would be administratively burdensome and might cause carriers without market power to be regulated as dominant carriers. BellSouth claims that the Commission's proposed approach would be inconsistent with the Commission's decision in the AT&T Reclassification Order, in which AT&T was classified as nondominant even though it was found to control two discrete services in the overall product market. BellSouth also contends that the Commission's proposed approach seems to signal a return to the ''all-services'' methodology of assessing dominance, which was expressly rejected in the AT&T Reclassification Order.

36. PacTel agrees that the product market definition turns on whether there are sufficiently close substitutes for a product or group of products. PacTel contends, however, that because services, such as MTS, discount plans, WATS, 800 service, foreign exchange service, wireless and even ''carrier'' access services, are highly substitutable options for consumers to place or receive long distance calls, the relevant product market should include all interstate, long distance services. USTA questions the Commission's use of a demand-elasticity methodology to define the relevant domestic product market, especially when the Commission proposes to continue to emphasize supply substitutability in defining the international product market. USTA asserts that the Commission has consistently and continually recognized a single relevant product market, and contends that the Commission should not abandon this long-settled definition in favor of numerous, fragmented submarkets.

37. A number of commenters support our proposal in the Interexchange NPRM to delineate separate product markets only if there is credible evidence demonstrating that there is or could be a lack of competitive performance with respect to a particular service or group of services. MCI claims that, although some interexchange services may have characteristics indicative of discrete product markets, there is no lack of competitive performance with respect to a particular service or group of services that would warrant the Commission's delineating the boundaries of specific product markets. The Pennsylvania Commission cautions that state commissions and consumer advocacy groups may not have access to the information necessary to determine whether credible evidence exists, especially if the Commission detariffs non-dominant carriers. Sprint states that the Commission should reexamine various product markets if circumstances require.

38. ACTA suggests that a separate relevant market should be established where the Commission finds that a carrier possesses market power over a particular market segment. In delineating product markets, ACTA believes that the Commission should consider many factors including such customer classifications as residential, small/medium businesses, and large businesses, but cautions that product markets based on discrete offerings may not adequately account for products offered as a package of services.

39. Two commenters identify particular services that, they contend, should be classified as separate product markets. The Pennsylvania Commission recommends that the Commission define three separate product markets: (1) MTS or residential long distance; (2) WATS/800 service; and (3) virtual network-type services (all services provided within software defined networks). SNET argues that the Commission should treat interstate toll free directory assistance as a separate product market because there are no substitutes and structural barriers make entry impossible.

c. Discussion

40. We conclude that the product market definition adopted in the Competitive Carrier proceeding should be revised to reflect the 1992 Merger Guidelines' approach to defining relevant markets. The 1992 Merger Guidelines define the relevant product market as ''a product or group of products such that a hypothetical profit maximizing firm that was the only present and future seller of those products ('monopolist') likely would impose at least a 'small but significant and nontransitory' increase in price.'' Accordingly, in defining the relevant product market, one must examine whether a ''small but significant and nontransitory'' increase in the price of the relevant product would cause enough buyers to shift their purchases to a second product, so as to make the price increase unprofitable. If so, the two products should be considered in the same product market. 1992 Merger Guidelines at p. 20,572. As explained above, we find that this new approach to defining the relevant product market will provide us with a more refined and narrowly-focused tool that more accurately reflects marketplace realities. We, therefore, adopt our tentative conclusion in the Interexchange NPRM

that we should define as a relevant product market any interstate, domestic, long distance service for which there are no close demand substitutes, or a group of services that are close substitutes for each other, but for which there are no other close demand substitutes. As previously noted, demand substitutability identifies all of the products or services that consumers view as substitutes for each other, in response to changes in price. We also adopt our tentative conclusion that we need not delineate the boundaries of specific product markets, except where there is credible evidence suggesting that there is or could be a lack of competitive performance with respect to a particular service or group of services.

41. Unlike the approach to product market definition adopted in the Competitive Carrier proceeding, our new approach will rely exclusively on demand considerations to define the relevant product market, rather than supply substitutability. As previously noted, supply substitutability identifies all productive capacity that can be used to produce a particular good, whether it is currently being used to produce that good or to produce some other, even unrelated, good. As discussed above, supply substitutability will continue to be a relevant factor in assessing market power, but will not be used as a factor in defining the relevant market. We disagree with USTA that our approach to defining the relevant market in the international services market is inconsistent with our approach in the domestic context. *See* discussion *infra* at ¶¶ 53,80. Although this distinction may be subtle, we believe that it is important in order to ensure that each step we take in assessing market power is grounded in fundamental economic principles and marketplace realities. Our new approach, however, does not reflect an ''all-services'' methodology of assessing dominance, in which a carrier must be deemed dominant with respect to all services if it is found to have market power over any single service. Rather, our new approach allows us, where warranted, to focus our analysis on particular services and limit our assessment of market power with regard to only those particular services.

42. We further adopt our tentative conclusion that we need not delineate any particular product markets to analyze the market power of a particular carrier or group of carriers unless there is credible evidence suggesting that there is or could be a lack of competitive performance with respect to a particular service or group of services. For example, if the price/cost ratio for a particular interexchange service is four times that of the price/cost ratio for all other interexchange services, that may constitute credible evidence of a lack of competitive performance. We recognize that the various services available in the interstate, domestic, long distance marketplace are changing. For example, we noted in the Interexchange NPRM that ''our finding (in the AT&T Reclassification Order) that the prices of 800 directory assistance and analog private line services could profitably be raised above competitive levels may imply these services constitute distinct relevant product markets.'' Interexchange NPRM, 11 FCC Rcd at 7166, ¶ 44. Patterns of consumer demand and the forces of competition spur continual innovation and force carriers constantly to reevaluate current services, remove outdated services, and add new services to the marketplace. In light of these marketplace dynamics, we conclude it is best to establish a consistent approach to defining the relevant product market that maintains the flexibility to recognize separate product markets only when there is credible evidence indicating that there is or could be a lack of competitive performance with respect to a particular service or group of services.

43. Despite two commenters' recommendations that we identify for all purposes, in this proceeding, particular services as separate product markets, we decline to do so at this time. We conclude that such a determination should only be made in the context of assessing the market power of a particular carrier or group of carriers. In this proceeding, we only assess the market power of BOC interLATA affiliates and independent LECs. As noted *supra* at ¶ 29, any modifications that we may make to decisions reached in the AT&T Reclassification Order will be addressed, as necessary, in further proceedings. We emphasize, however, that because market definition is only one step in assessing market power, changes made in the approach to defining relevant markets will not necessarily produce different assessments of market power. Unless there is credible evidence suggesting that there is or could be a lack of competitive performance with respect to a particular service or group of services, we will treat these services together, by analyzing aggregate data that encompasses all long distance services, rather than information particular to specific services. Such data may include, but not be limited to, price level of services, the number of competitors, the share of sales by competitors, and the ease with which potential entrants can provide these services. Recognizing that we have previously found that there is substantial competition with respect to most interstate, long distance services, such an approach allows us to avoid the burdensome task of delineating separate product markets when there is no other credible evidence suggesting that a particular carrier or group of carriers is exercising or has the ability to exercise market power, with respect to a particular service or group of services. Therefore, we will refrain from examining narrower relevant product markets except when such credible evidence has come to our attention. As we conclude *infra* at ¶ 50, for purposes of assessing the market power of BOC interLATA affiliates and independent LECs in their provision of domestic, interstate, long distance services, we need not delineate separate product markets because there is no credible evidence in the record that indicates that there is or will be a lack of competitive performance associated with any particular long distance service offered by BOC interLATA affiliates or independent LECs.

44. We conclude that the approach we adopt here will not impose an undue burden on parties seeking to have the Commission define narrower relevant product markets in order to assess the market power of a particular carrier or group of carriers. Such parties will not have to prove that there is an actual lack of competitive performance with respect to a particular service or group of services. Rather, they must only present credible evidence that there is or could be a lack of competitive performance. Credible evidence should include information sufficient to identify services that are likely substitutes and the carrier or group of carriers that allegedly possesses market power. Contrary to the concerns of the Pennsylvania Public Utilities Commission, because information suggesting a lack of competitive performance, such as availability of service from a single provider, is easily observable, we need not require data from proprietary sources for this purpose. Moreover, as we recognized in the Tariff Forbearance Order, even in the absence of tariffs for interstate, domestic, interexchange services offered by non-dominant carriers, we conclude that information concerning the rates, terms and conditions for such services will still be readily accessible to consumers and other interested parties because customers will continue to receive this information through, *inter*

alia, the billing process, notifications required by service contracts or state consumer protection laws, and marketing materials, such as advertisements.

2. Product Market Definition for BOC InterLATA Affiliates and Independent LECs

a. Background

45. In the Non-Accounting Safeguards NPRM, we tentatively concluded that if we adopt the market definition approach proposed in the Interexchange NPRM, we should treat all interstate, domestic, long distance services as the relevant product market for purposes of determining whether BOC interLATA affiliates have market power in their provision of in-region domestic, interstate, interLATA services and whether independent LECs have market power in their provision of in-region domestic, interstate, interexchange services.

b. Comments

46. Although commenters disagree over whether the Commission should adopt the approach to the product market definition proposed in the Interexchange NPRM, most commenters agree with the Commission's tentative conclusion in the Non-Accounting Safeguards NPRM that interstate, domestic, long distance services should be treated as a single product market for purposes of assessing whether BOC interLATA affiliates and independent LECs have market power.

47. AT&T argues that the interexchange product market definition is irrelevant to whether the BOCs could abuse their power in the local market to impede interexchange competition. Instead, AT&T contends that the proper markets to analyze are the local exchange and exchange access service markets, rather than the interexchange market. DOJ also argues that the product market definition is irrelevant to whether BOC interLATA affiliates could exercise market power in the interLATA marketplace because BOC interLATA affiliates clearly do not have the ability to raise prices by restricting output.

48. BellSouth contends that since the Commission did not redefine the product market in order to evaluate whether AT&T was a dominant carrier, it need not reconsider the definition in order to evaluate the competitive effects of BOC entry into the interexchange market. USTA and GTE agree with the Commission's tentative conclusion that all interstate, domestic, interexchange services should be considered the relevant product market for independent LECs.

49. The Independent Telephone Telecommunications Alliance (ITTA) contends that the Commission should adopt a product market defined as ''all telecommunications services,'' that encompasses such services as interexchange, local, access and wireless services, in recognition of the new market structure envisioned by the 1996 Act in which firms will be providing a broad range of services. The Competitive Telecommunications Association (CTA) contends that the relevant product market should include those services that rely on or utilize the BOCs' local network.

c. Discussion

50. We are aware of no evidence, nor has any commenter presented any such evidence in the record, that suggests that there is a particular interexchange service or group of services that will be provided by BOC interLATA affiliates or independent LECs with respect to which there is or could be a lack of competitive performance. Moreover, we have found previously that there is substantial competition with respect to most interstate, domestic, interexchange service offerings. As a result, we conclude that we need not conduct any particularized product market inquiry in order to evaluate the market power of BOC interLATA affiliates and independent LECs for interexchange services. We conclude that, at this time and for purposes of determining whether BOC interLATA affiliates or independent LECs have market power in the provision of domestic, interstate, long distance services, our assessment of market power will remain the same, regardless of whether we examine each individual long distance service, different groupings of long distance services, or aggregate data that encompasses all long distance services. Therefore, in assessing the market power of BOC interLATA affiliates and independent LECs in the provision of domestic, interstate, long distance services, we find it is appropriate at this time to evaluate their market power with respect to all interstate, domestic, long distance services, rather than conducting a separate analysis of each individual service.

51. We disagree with AT&T's assertion that the product market definition is irrelevant in assessing whether BOC interLATA affiliates or independent LECs possess market power in the domestic, interstate, long distance market. As discussed above, we believe that a relevant product market must be defined before we can evaluate whether a particular carrier or group of carriers possesses market power. While we agree with AT&T that other factors are important in making our overall assessment of market power, we conclude that we must define the relevant product market in order to reach an accurate assessment of whether BOC interLATA affiliates or independent LECs possess market power in the domestic, interstate, long distance marketplace.

3. International Product Market for BOC InterLATA Affiliates and Independent LECs

52. In the Non-Accounting Safeguards NPRM, we tentatively concluded that we should apply the current international product market definition, which recognizes international message telephone service (IMTS) and non-IMTS as separate product markets, for purposes of determining whether BOC interLATA affiliates and independent LECs possess market power in the provision of international long distance services.

53. MCI and NYNEX generally agree with the Commission's tentative conclusion that IMTS and non-IMTS should be treated as the relevant product markets for international services. USTA supports treating international services as a product market separate from domestic services, because international agreements and regulation create different conditions than exist for domestic interexchange services. Questioning the wisdom of dividing international services into two distinct product markets, Sprint argues that the Commission should retain flexibility to reflect the rapid changes taking place in the product market for international communications. Sprint asserts, for example, that, where providers engage in the resale of international private lines interconnected to the public switched network at both ends, the distinctions between IMTS and non-IMTS are blurred.

54. We conclude that, for purposes of determining whether BOC interLATA affiliates and independent LECs possess market power in the provision of international long distance services, we will modify our tentative conclusion and examine aggregate data that encompasses all international long distance services. Because our approach to defining relevant markets is based on fundamental economic principles, we find that it is applicable for assessing market power in both the domestic and international long distance markets. Although we recognize that international agreements and regulation

distinguish international long distance service from domestic long distance service, we conclude that, while these distinctions may affect our assessments of market power, they do not change our approach to defining relevant markets. Therefore, we find that we should define the relevant product market, in the international context, as any international long distance service for which there are no close substitutes or a group of services that are close substitutes for each other, but for which there are no other close substitutes. We need only delineate specific product markets, however, when there is credible evidence suggesting that there is or could be a lack of competitive performance with respect to a particular service or group of services.

55. Although traditionally we have recognized IMTS and non-IMTS as separate international long distance product markets, we conclude, similar to our conclusion in the domestic context, that this distinction is not necessary for purposes of assessing whether BOC interLATA affiliates and independent LECs possess market power in the international long distance marketplace in this Order because our assessment of market power will not change whether we examine IMTS and non-IMTS separately as individual product markets or analyze aggregate data that encompasses both IMTS and non-IMTS. Our decision to analyze aggregate data that encompasses IMTS and non-IMTS, in this particular context, does not modify our treatment of IMTS and non-IMTS as separate product markets under the existing framework for regulating U.S. carriers as dominant in the provision of international services because of the market power of an affiliated foreign carrier.

C. Geographic Market

1. Geographic Market in General

a. Background

56. In the Competitive Carrier proceeding, the Commission defined the relevant geographic market as ''the United States (including Alaska, Hawaii, Puerto Rico, U.S. Virgin Islands, and other U.S. offshore points) . . . with no relevant submarkets.'' In the Interexchange NPRM, the Commission tentatively concluded that we should refine this analysis and define a relevant geographic market for interstate, domestic, interexchange services as all calls, in the relevant product market, between two particular points. For purposes of market power analysis, however, the Commission tentatively concluded that, in general, we should treat domestic, interstate, interexchange calling as a single, national market because geographic rate averaging, in conjunction with the pervasiveness of ubiquitous calling plans, should reduce the likelihood that a carrier could exercise market power in a single point-to-point market, and because price regulation of access services and excess capacity in interstate transport should reduce the likelihood that an interexchange carrier could exercise market power in most point-to-point markets. If there is credible evidence suggesting that there is or could be a lack of competition in a particular point-to-point market or group of point-to-point markets and there is a showing that geographic rate averaging will not sufficiently mitigate the exercise of market power in that market or group of markets, we proposed to examine the individual market or group of markets for the presence of market power. We asked commenters to evaluate this new approach and to suggest any other possible approaches.

b. Comments

57. Many commenters oppose the Commission's proposal to define a relevant geographic market for interstate, domestic, interexchange services as all calls between two points, although some commenters concede its conceptual validity. Those parties opposing the point-to-point market definition generally advocate the retention of the single national market definition adopted in the Competitive Carrier proceeding. Several commenters claim that demand patterns based on the widespread use of ubiquitous calling plans favor a national market. Other commenters indicate that it may be too early to define relevant geographic markets with lasting precision and that point-to-point markets would not be administrably viable because of the impracticality of conducting a market power analysis in each point-to-point market. A number of parties support our proposal to treat interstate, interexchange calling as a single national market unless there is credible evidence suggesting that there is or could be a lack of competition in a particular point-to-point or group of point-to-point markets, and there is a showing that geographic rate averaging will not sufficiently mitigate the exercise of market power.

58. AT&T disagrees with the Commission's point-to-point market analysis and argues that a single national market definition reflects the way that competitors have built and conducted their business. AT&T also notes that the Commission has rejected point-to-point markets on several previous occasions. AT&T, BellSouth, USTA and NYNEX emphasize that supply substitutability demonstrates that the market is national because several carriers have national networks with capacity to provide alternate routing and the ease of constructing new facilities or to resell services allows carriers to enter the market and expand service rapidly.

59. Several commenters contend that the geographic rate averaging and rate integration requirements in the 1996 Act and the regulatory regime overseeing access rates point to the existence of a single, national market because together they ensure that the benefits of competition in one market will be passed on to customers in other markets. Bell Atlantic supports a single national market because, as long as customers select a carrier for nationwide coverage, national pricing schemes will drive the market, whether or not certain carriers offer services originating only in a particular region. PacTel claims that the trend toward uniform, distance-insensitive pricing demonstrates that the interexchange market remains a national one. USTA asserts that if point-to-point markets are appropriate, AT&T should not have been classified as a non-dominant interexchange carrier because it is the sole carrier serving a number of different cities.

60. PacTel and GTE submit that a single nationwide geographic market is supported by economic theory, Commission precedent, the AT&T Reclassification Order, and the 1996 Act. GTE acknowledges, however, that certain service providers may be able to take advantage of their market power in some point-to-point markets, despite geographic rate averaging, regulated access pricing and excess transmission capacity. In such situations, GTE recognizes that a narrower geographic market may be appropriate to measure market power if there is credible evidence of a lack of competition in a particular market. GTE adds that, if the Commission does adopt a point-to-point approach, this analysis should apply to IXCs as well as LECs.

61. Ameritech does not oppose the possibility of identifying smaller markets than the national market, but claims that it is unable to identify any such markets at this time. DOJ acknowledges that the relevant geographic market theoretically could be defined as all calls between two particular points, but argues that examining markets at such a level of detail would be impractical.

62. LDDS claims that, although, for most purposes, the appropriate relevant

geographic market for interstate, interexchange services is national, the division between local and long distance will blur as competition develops in the local market and the Commission must be able to employ an appropriate geographic market definition to reflect these changes. ACTA and GCI oppose the Commission's proposal to treat interstate, interexchange services generally as a single national market. According to ACTA, such a definition would overlook route-specific pricing schemes designed to defeat competitive entry. GCI argues that certain obvious characteristics, such as a *de facto* or *de jure* monopoly in the provision of a service or a shortage of capacity in interstate transport, should provide adequate justification for examining a particular market for the presence of market power. GCI cites AT&T/Alascom's facilities monopoly in rural Alaska and the limited fiber optic capacity linking Alaska to the continental United States as such examples.

63. A few commenters propose alternative approaches for defining relevant geographic markets, including markets based on state boundaries or local exchange boundaries and markets based on Metropolitan Statistical Areas (MSAs), Basic Trading Areas (BTAs) or Major Trading Areas (MTAs). *See, e.g.*, Frontier April 19, 1996 Comments at 1–2; PaPUC April 19, 1996 Comments at 10–11; Missouri Public Counsel May 3, 1996 Reply at 3. We note that Rand McNally & Company is the copyright owner of the Basic Trading and Major Trading Area Listings, which list the counties contained in each BTA, as embodied in Rand McNally's Trading Area System Diskette and Atlas & Marketing Guide. Rand McNally has licensed the use of its copyrighted MTA/BTA listings and maps for certain wireless telecommunications services. See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896–901 MHz and the 935–940 MHz Bands Allotted to the Specialized Mobile Radio Pool (60 FR 21987 (May 4, 1995)). GCI asserts that, because market power does not follow any preestablished lines, the Commission should conduct a market power analysis for any area for which there is a nonfrivolous allegation of market power.

c. Discussion

64. We conclude that the geographic market definition adopted in the Competitive Carrier proceeding should be revised to reflect the approach to defining relevant markets contained in the 1992 Merger Guidelines. The 1992 Merger Guidelines define the relevant geographic market as the ''region such that a hypothetical monopolist that was the only present or future producer of the relevant product at locations in that region would profitably impose at least a 'small but significant and nontransitory' increase in price, holding constant the terms of sale for all products produced elsewhere.'' Accordingly, in defining the relevant geographic market, one must examine whether a ''small but significant and nontransitory'' increase in the price of the relevant product at a particular location would cause a buyer to shift his purchase to a second location, so as to make the price increase unprofitable. If so, the two locations should be considered to be in the same geographic market. 1992 Merger Guidelines at pp. 20,573–20,573–3. In accordance with the principles enunciated in the 1992 Merger Guidelines, we believe that long distance calling, at its most fundamental level, involves a customer making a connection from one specific location to another specific location. As we stated in the Interexchange NPRM, ''[w]e believe that most telephone customers do not view interexchange calls originating in different locations to be close substitutes for each other.'' Therefore, we further conclude that we will follow the revised approach to the geographic market definition proposed in the Interexchange NPRM and define a relevant geographic market for interstate, domestic, long distance services as all possible routes that allow for a connection from one particular location to another particular location (*i.e.*, a point-to-point market).

65. Contrary to a number of commenters, we find that defining the relevant geographic market as a point-to-point market, rather than as a single national market, more accurately reflects the fact that most customers use long distance services by purchasing ubiquitous calling plans. A point-to-point connection is a constituent element of all types of interstate, domestic, long distance services, (As we described in the Interexchange NPRM, ''residential interexchange services can be thought of as a bundle of all possible interexchange calls originating from a single point and terminating anywhere, and 800 service as a bundle of interstate, interexchange calls originating from a certain geographic region and terminating at a specific point.'' Interexchange NPRM, 11 FCC Rcd at 7168, ¶50.) including purely point-to-point services, (private line service is an example of a point-to-point service) as well as point-to-all-points services (Residential long distance service is an example of a point-to-all-points service. Point-to-all-points services can be viewed as a bundle of point-to-point connections all originating at the same point.) and all-points-to-point services. (Toll free 800 or 888 numbers that are accessible from all domestic geographic locations would be examples of an all points-to-point service. An all-points-to-point service can be viewed as a bundle of point-to-point connections that all terminate at the same point.) Ubiquitous calling plans encompass point-to-all-points services or all-points-to-point services, which are essentially a bundle of point-to-point connections serving a common point. Although ubiquitous calling allows customers to make multiple point-to-point connections from or to a common point via a single source, it does not change the nature of interstate, domestic, long distance calling. From the customer's perspective, while the calling plan itself may be ''ubiquitous'' in that it offers nationwide coverage from or to a common point, the market to purchase that plan is a localized market, not a national one. For example, customers located in Miami generally purchase calling plans that offer long distance service originating from Miami. Any calling plan that provides service originating from Los Angeles, even if it is ''ubiquitous'' service, would not be a viable substitute for customers located in Miami. Accordingly, we believe that defining the relevant geographic market as a point-to-point market is a more accurate approach to assessing market power than a single national market definition, even assuming that most long distance customers purchase ubiquitous calling plans.

66. We recognize, however, that assessing market power in each individual point-to-point market would be administratively impractical and inefficient. Therefore, we clarify our proposal in the Interexchange NPRM to treat, in general, interstate, long distance calling as a single national market unless there is credible evidence indicating that there is or could be a lack of competition in a particular point-to-point market, and there is a showing that geographic rate averaging will not sufficiently mitigate the exercise of market power. We conclude that when a group of point-to-point markets exhibit sufficiently similar competitive characteristics (*i.e.*, market structure), we will examine that group of markets using aggregate data that encompasses all point-to-point markets

in the relevant area, rather than examine each individual point-to-point market separately. Therefore, if we conclude that the competitive conditions for a particular service in any point-to-point market are sufficiently representative of the competitive conditions for that service in all other domestic point-to-point markets, then we will examine aggregate data, rather than data particular to each domestic point-to-point market. For example, we could analyze national market share data, rather than market share data for particular point-to-point markets. Such a finding would require that there be no credible evidence that there is or could be a lack of competitive performance in any point-to-point market for that service. As noted in the Interexchange NPRM, we believe that geographic rate averaging, price regulation of exchange access services, and the excess capacity in interstate transport currently cause carriers to behave similarly in each domestic point-to-point market and reduce the likelihood that carriers could exercise market power in most point-to-point markets.

67. Unless there is credible evidence suggesting that there is or could be a lack of competition in a particular point-to-point market or group of point-to-point markets, and there is a showing that geographic rate averaging will not sufficiently mitigate the exercise of market power, we will refrain from employing the more burdensome approach of analyzing separate data from each point-to-point market. We believe that, in most cases, statistics, such as market shares, are most usefully calculated based on aggregate data covering all domestic point-to-point markets. In many point-to-point markets (*e.g.*, one home to another home), one long distance carrier will have 100 percent market share. This does not imply, however, that this particular long distance carrier has market power. Therefore, in using market share as one factor in assessing market power, it is important that we examine market share in the broadest geographic group of point-to-point markets in which competitive conditions are reasonably homogeneous.

68. In the Interexchange NPRM, we also sought comment on how narrowly we should define the points of origination and termination when examining a point-to-point market. The relevant point in a point-to-point market is the location of a particular telephone or other telecommunications device. For example, with regard to residential long distance service, the relevant point is each individual customer's residence. We recognize that assessing market power at such a level of detail would be administratively impractical. We conclude, however, that there is no need to define larger points because, when assessing the market power of a particular carrier or group of carriers, we will treat together all point-to-point markets within a boundary such that all transactions carried out within that boundary are subject to the same competitive conditions. Therefore, for all practical purposes, we fully expect that the relevant geographic area for assessing market power will usually consist of multiple point-to-point connections that exhibit the same competitive conditions. Because we will invariably analyze a group of point-to-point markets, there is no practical need to also redefine the individual points.

69. Although GCI has suggested that we treat Alaska as a separate geographic market in assessing the market power of AT&T/Alascom, we do not do so in this proceeding. As noted *supra* at notes 170, 171, GCI identified the Alaska market as a separate geographic market. We also note that GCI has filed a petition seeking reconsideration of the AT&T Reclassification Order, in which it argues that the reclassification of AT&T does not apply to AT&T/Alascom, Inc. because AT&T/Alascom is still dominant in the Alaska market. *See* GCI petition for reconsideration or clarification of AT&T Reclassification Order (filed Nov. 22, 1995). As noted above, any modifications to decisions reached in the AT&T Reclassification Order that may be necessary as a result of our decision here will be addressed, as necessary, in further proceedings. We emphasize, however, that, because market definition is only one step in assessing market power, changes made in the approach to defining relevant markets will not necessarily produce different assessments of market power.

2. Geographic Market for BOC InterLATA Affiliates and Independent LECs

a. Background

70. In the Non-Accounting Safeguards NPRM, we tentatively concluded that, if we adopt the approach proposed in the Interexchange NPRM, we should evaluate a BOC's point-to-point markets in which calls originate in-region separately from its point-to-point markets in which calls originate out-of-region, for purposes of determining whether BOC interLATA affiliates have market power in the provision of interstate, domestic, interLATA services. Similarly, we tentatively concluded that we should evaluate an independent LEC's point-to-point markets in which calls originate in its local exchange areas separately from its markets in which calls originate outside those areas, for the purpose of determining whether an independent LEC possesses market power in the provision of interstate, domestic, interexchange services.

b. Comments

71. Several commenters support the Commission's tentative conclusion that it should evaluate a BOC's point-to-point markets in which calls originate in-region separately from its point-to-point markets in which calls originate out-of-region in order to determine whether a BOC interLATA affiliate possesses market power in-region. CTA and LDDS argue that this approach is supported by the fact that Congress legislated different treatment for in-region and out-of-region BOC services. Although LDDS agrees with the Commission's proposal to identify particular markets only where credible evidence of a lack of competition and a failure of geographic rate averaging to mitigate market power exists, LDDS argues that the Commission should find that, in light of BOC control over the origination and termination ends of nearly all interstate, long distance calls, the relevant geographic market for a BOC interLATA affiliate will be the entire region from which it provides long distance services, regardless of whether it is part of the region in which the BOC provides local exchange and exchange access service. MCI contends that the approach proposed in the Non-Accounting Safeguards NPRM recognizes that there are greater opportunities for cross-subsidization and anticompetitive conduct for interLATA service originating in a BOC's service region. Regardless of the market definition, DOJ states that it is ''not unreasonable'' in this proceeding for the Commission to distinguish a BOC's provision of interexchange service outside its region from provision of such service within its region. Sprint and the New York Public Service Department urge the Commission to recognize that mergers, acquisitions, and similar combinations by BOCs may require consideration of geographic markets more extensive than a BOC's own region.

72. The BOCs generally oppose the approach proposed in the Non-Accounting Safeguards NPRM and contend that the Commission should treat domestic, interstate, interexchange services as a single national market for purposes of determining whether a BOC interLATA affiliate possesses in-region market power. BellSouth and USTA

contend that all competing carriers should be subject to the same standards, including the same relevant market definitions, absent compelling reasons for disparate treatment. BellSouth and USTA argue that, given the BOCs' zero market share, the structural separation requirements and regulatory safeguards that apply to a BOC's provision of long distance services, and the comprehensive regulation of the BOCs' bottleneck facilities, the Commission's assumption that BOC interLATA affiliates may have market power over in-region interexchange services and therefore those services may need to be examined separately from out-of-region services is flawed.

73. NYNEX contends that the fact that the BOCs are not likely to begin offering interexchange services with nationwide networks does not justify redefining the geographic market because many interexchange carriers also concentrate their offerings in particular regions. NYNEX also asserts that the 1992 Merger Guidelines support a single, nationwide geographic market definition regardless of whether interexchange services provided by BOC interLATA affiliates originate in-region or out-of-region. Bell Atlantic, BellSouth, and NYNEX argue that geographic rate averaging will prevent the BOCs from being able to raise prices selectively in targeted areas. Moreover, these parties allege that even if a BOC attempted to raise rates on any given route, other carriers would respond by offering lower rates because they would have sufficient capacity available on their existing networks to be able to carry the BOC customers that they would attract through lower prices.

74. USTA argues that the Commission should not change the single, national geographic market definition in assessing the market power of independent LECs because: (1) The national scope of major telecommunications companies has increased over the years, not lessened, with the four largest IXCs controlling over 85 percent of the market; and (2) the national market is the relevant market for independent LECs, their competitors and the public, because interexchange service offerings are generally ubiquitous, not local or regional, and pricing, marketing, and networks are all national in scope. USTA adds that customers generally purchase interexchange services under ubiquitous calling plans, not on a point-to-point basis. According to USTA, although independent LECs provide local exchange services that are regional or local in scope, this does not change the national nature of the interexchange market because customers can choose from national, regional or local providers of long distance service.

75. As noted above, AT&T asserts that the geographic market definition is irrelevant in determining whether the BOCs or independent LECs could abuse their power in the local market to impede interexchange competition. AT&T contends that market definitions and market share analyses are unnecessary when the presence of market power can be proven directly, as it can here because of the BOCs' control of the local bottleneck, or where undisputed power in one market (i.e., local services) can be leveraged to impede competition in a second market (i.e., long distance). AT&T also asserts, however, that ''while interexchange services originating in a particular BOC's service area generally could not be a separate geographic market, a determination of the appropriate regulatory treatment of a BOC's (or independent LEC's) in-region interLATA services should focus on these areas.''

c. Discussion

76. In evaluating whether BOC interLATA affiliates and independent LECs possess market power in the interstate, domestic, long distance market, we conclude that we generally will follow the approach proposed in the Non-Accounting Safeguards NPRM. As discussed above, we disagree with those commenters that advocate using a single national geographic market definition. We conclude that a local exchange carrier's control of the local bottleneck constitutes credible evidence that there could be a lack of competitive performance in point-to-point markets that originate in-region. Because we expect that competitive conditions will be different for those point-to-point markets that originate in-region than for those point-to-point markets that originate out-of-region, we find that our analysis of market power should reflect this expectation. In-region, a BOC's control over the local bottleneck may give it a competitive advantage that it does not have out-of-region, causing the BOC to compete differently in-region than out-of-region. Therefore, the competitive conditions in-region are likely to be different in-region than out-of-region. Therefore, in determining whether BOC interLATA affiliates have market power in the provision of interstate, domestic, interLATA services, we conclude that calls originating from in-region point-to-point markets should be analyzed separately from calls originating from out-of-region point-to-point markets. Similarly, in determining whether independent LECs have market power in the provision of interstate, domestic, interexchange services, we conclude that calls originating in point-to-point markets within their local service areas should be analyzed separately from calls originating in point-to-point markets outside those areas.

77. We adopt this bifurcated analysis to determine whether a BOC or independent LEC, through improper cost allocation or discrimination, could use its market power in local exchange and exchange access services to disadvantage long-distance rivals of the BOC interLATA affiliate or independent LEC. Such improper cost allocation or discrimination might enable a BOC interLATA affiliate or independent LEC to obtain the ability profitably to raise and sustain its price for in-region, interstate, domestic, long distance services above competitive levels by restricting its output of long distance services. We are not persuaded, moreover, that geographic rate averaging of interstate long distance services alone will necessarily suffice to offset the potential anticompetitive effects of a BOC's or independent LEC's use of the market power resulting from its control over local access facilities because if a BOC interLATA affiliate's or independent LEC's long distance customers are concentrated in one region, it may be profitable to raise prices above competitive levels, even if geographic rate averaging might cause it to lose market share outside that region.

78. We reject AT&T's contention that the geographic market definition is irrelevant in assessing whether BOC interLATA affiliates or independent LECs possess market power. As discussed above, we conclude that a relevant geographic market must be defined in order to conduct an accurate assessment of market power. While we agree with AT&T that other factors are important in making our overall assessment of market power, we do not agree that we can avoid defining the relevant geographic market if we wish to achieve an accurate assessment of whether BOC interLATA affiliates or independent LECs possess market power in the long distance marketplace. Moreover, we further note that, in some cases, it may be necessary to focus specifically on the termination point because the local exchange carrier that serves the end-user customer will necessarily have market power with regard to that customer.

3. International Geographic Market for BOC InterLATA Affiliates and Independent LECs

79. In the Non-Accounting Safeguards NPRM, we tentatively concluded that, for purposes of assessing whether BOC interLATA affiliates or independent LECs could exercise market power in the international long distance marketplace, market power should be measured on a worldwide, rather than route-by-route, basis, except for routes on which the carriers are affiliated with foreign carriers in the destination market. MCI, NYNEX and USTA agree with the Commission's tentative conclusion.

80. In assessing whether BOC interLATA affiliates and independent LECs possess market power in the international long distance marketplace, we adopt our tentative conclusion, but clarify that we will examine aggregate data that encompasses all international point-to-point markets, unless there is credible evidence suggesting that there is or could be a lack of competition in one or more international point-to-point markets. Of course, as discussed above, we will examine international point-to-point markets that originate in-region separately from international point-to-point markets that originate out-of-region. We acknowledge that myriad factors, including whether a carrier controls 100 percent of the capacity of the U.S. half of a particular international point-to-point market, may affect our determination of whether each international point-to-point market has competitive characteristics that are sufficiently similar to other point-to-point markets in the international marketplace. In classifying AT&T as non-dominant in the provision of IMTS, we generally analyzed AT&T's market power on a worldwide basis as a surrogate for a route-by-route analysis, except a route-by-route analysis was employed to scrutinize those markets that have not supported entry by competing U.S. carriers. A route-by-route approach also was used to analyze the competitive impact of AT&T's affiliations and alliances with foreign carriers on particular U.S. international routes. In the Matter of Motion of AT&T Corp. to be Declared Non-Dominant for International Service, Order, FCC 96–209, at ¶ 32 (rel. May 14, 1996). In such cases, it may be necessary to conduct a more particularized analysis and examine certain individual international point-to-point markets or groups of point-to-point markets separately. Because no such factors currently apply or, we believe, are likely to apply to any BOC interLATA affiliate or independent LEC, however, we find that each individual international point-to-point market exhibits similar competitive characteristics to all other international point-to-point markets. Therefore, it is unnecessary for us to conduct a separate analysis for each international point-to-point market, given the administrative burdens associated with such an inquiry. Our decision here to examine aggregate data that encompasses all international point-to-point markets does not modify our existing route-by-route approach to consider whether U.S. carriers affiliated with a foreign carrier should be regulated as dominant in the provision of international services because they are affiliated with a foreign carrier that exercises market power in a foreign market.

IV. Classification of BOC Interlata Affiliates and Independent LECS as Dominant or Non-Dominant Carriers in the Provision of in-Region Long Distance Services

81. In this section, we consider whether we should continue the dominant carrier classification that under our rules would apply to the BOC interLATA affiliates in the provision of in-region, interstate, domestic, interLATA services. As previously discussed, for convenience, we use the term ''BOC interLATA affiliates'' to refer to the separate affiliates established by the BOCs, in conformance with section 272(a)(1), to provide in-region, interLATA services. *See supra* n. 12. In order to reclassify the BOC interLATA affiliates as non-dominant, our rules require us to conclude that they will not possess market power in the provision of those interLATA services in the relevant product and geographic markets. Our analysis of whether the BOC interLATA affiliates should be classified as dominant or non-dominant in the provision of in-region, interstate, domestic, interLATA services has no bearing on the determination of whether a BOC interLATA affiliate has satisfied the requirements of section 271(d)(3), and it should not to be interpreted as prejudging such determinations in any way. We also consider whether we should modify the regulatory regime adopted in the Competitive Carrier Fifth Report and Order for the regulation of in-region, interstate, domestic, interexchange services provided by independent LECs. Finally, we consider whether we should apply the same regulatory classification to the BOC interLATA affiliates' and independent LECs' provision of in-region, international services as we adopt in this proceeding for their provision of in-region, interstate, domestic, long distance services. This proceeding does not modify the Commission's separate framework, adopted in the International Services Order and Foreign Carrier Entry Order, for regulating United States international carriers (including BOC interLATA affiliates or independent LECs) as dominant on routes where an affiliated foreign carrier has the ability to discriminate in favor of its U.S. affiliate through control of bottleneck services or facilities in the foreign destination market. *See infra* ¶ 139.

A. Classification of BOC InterLATA Affiliates

82. We conclude that the requirements established by, and the rules implemented pursuant to, sections 271 and 272, together with other existing rules, sufficiently limit a BOC's ability to use its market power in the local exchange or exchange access markets to enable its interLATA affiliate profitably to raise and sustain prices of in-region, interstate, domestic, interLATA services significantly above competitive levels by restricting the affiliate's own output. We therefore classify the BOCs' section 272 interLATA affiliates as non-dominant in the provision of these services. We also conclude that we should apply the same regulatory classification to the BOC interLATA affiliates' provision of in-region, international services as we adopt for their provision of in-region, interstate, domestic, interLATA services.

1. Definition of Market Power and the Limits of Dominant Carrier Regulation

a. Background

83. In the Non-Accounting Safeguards NPRM, we noted that there are two ways in which a carrier can profitably raise and sustain prices above competitive levels and thereby exercise market power. Non-Accounting Safeguards NPRM at ¶ 131. For convenience, we refer, as we did in the Notice, to a carrier's ability to engage in such a strategy as the ability to ''raise prices.'' First, a carrier may be able to raise prices by restricting its own output (which usually requires a large market share); second, a carrier may be able to raise prices by increasing its rivals' costs or by restricting its rivals' output through the carrier's control of an essential input, such as access to bottleneck facilities, that its rivals need to offer their services. *Id.* We also noted that economists have recognized these different ways to exercise market power by distinguishing between ''Stiglerian'' market power, which is the ability of a firm profitably to raise and sustain its

price significantly above the competitive level by restricting its own output, and ''Bainian'' market power, which is the ability of a firm profitably to raise and sustain its price significantly above the competitive level by raising its rivals' costs and thereby causing the rivals to restrain their output. T.G. Krattenmaker, R.H. Lande, and S.C. Salop, Monopoly Power and Market Power in Antitrust Law, 76 Geo. L.J. 241, 249–53 (1987). We sought comment on whether the BOC interLATA affiliates should be classified as dominant carriers in the provision of in-region, interstate, domestic, interLATA services under our rules only if we find that the affiliates have the ability to raise prices of those services by restricting their own output, or whether we should also classify the affiliates as dominant if the BOCs have the ability to raise prices by raising the costs of their affiliates' interLATA rivals.

b. Comments

84. Most commenters that address this issue, including DOJ, argue that the BOC interLATA affiliates should be classified as dominant only if they have the ability to raise the prices of interLATA services by restricting their own output. MCI and AT&T contend, however, that we should also classify a BOC interLATA affiliate as dominant if it (or its BOC parent) has the ability to raise the costs or restrict the output of the affiliate's rivals through control of an essential input, such as exchange access, or the ability to raise the prices paid by the affiliate and its rivals for exchange access. MCI claims that, even if consumer prices are not raised immediately, a BOC's ability to impose excessive costs on or to restrict essential inputs to its interexchange rivals presents a long-run harm to competition because it will make the BOC's rivals weaker competitors, and thereby reduce their output and make consumer price increases inevitable. MCI asserts that raising rivals' costs is, in fact, likely to result in an increase in the BOC interLATA affiliate's rates, which could be prevented by dominant carrier regulation.

c. Discussion

85. We conclude that the BOC interLATA affiliates should be classified as dominant carriers in the provision of in-region, interstate, domestic, interLATA services only if the affiliates have the ability to raise prices of those services by restricting their own output of those services. As we stated in the NPRM, we believe that our dominant carrier regulations are generally designed to prevent a carrier from raising prices by restricting its output rather than to prevent a carrier from raising its prices by raising its rivals' costs. Non-Accounting Safeguards NPRM at ¶ 132. Accord NYNEX Aug. 15, 1996 Comments at 51; USTA Aug. 15, 1996 Comments at 47; DOJ Aug. 30, 1996 Reply at 16. As noted in the NPRM, the definitions of market power cited by the Commission in the Competitive Carrier Fourth Report and Order referred to the concept of a carrier raising price by restricting its own output. Non-Accounting Safeguards NPRM at ¶ 132 (citing Competitive Carrier Fourth Report and Order, 95 FCC 2d at 558, ¶¶ 7, 8). In fact, these regulations were adopted at a time when AT&T was essentially a monopoly provider of domestic long distance services. As discussed below, application of these regulations to a carrier that does not have the ability to raise long distance prices by restricting its own output could lead to incongruous results.

86. Even AT&T acknowledges that at least some of the dominant carrier regulations, such as price ceilings and more stringent section 214 requirements, are not designed to address the potential problems associated with BOC entry into competitive markets. For example, although we recognize, as discussed below, that there are circumstances in which price cap regulation (including price floors) of a BOC interLATA affiliate's rates might decrease a BOC's ability to engage in anticompetitive conduct, (We also conclude below that price cap regulation of the BOCs' exchange access services will reduce the BOCs' incentive to misallocate the costs of their affiliates' interLATA services. *See infra* ¶ 106.) we believe that in this situation the disadvantages of price cap regulation outweigh its benefits. Similarly, we question whether more stringent section 214 requirements would be an efficient means of addressing the concerns raised by BOC entry. Congress enacted the facilities-authorization requirements in section 214 and subsequent amendments primarily to prevent investment in unnecessary new plant by rate-base regulated common carriers and to bar service discontinuance in areas served by a single carrier. *See* Competitive Carrier First Report and Order, 85 FCC 2d at 39, ¶ 114. *See also* H. Averch and L. L. Johnson, Behavior of the Firm under Regulatory Constraint, 52 Amer. Econ. Rev. 1053 (1962) (a firm under rate of return regulation has an incentive to invest in more than the efficient amount of plant in order to increase the value of its rate base). Because we previously have found that markets for long distance services are substantially competitive in most areas, marketplace forces should effectively deter carriers that face competition from engaging in the practices that Congress sought to address through the section 214 requirements. For example, a carrier facing competition lacks the incentive to invest in unneeded facilities, because it cannot extract additional revenue from its long distance customers to recoup the cost of those facilities. If such a carrier discontinues service in an area where it faces competition, its customers could turn to the carrier's competitors for service. Because marketplace forces generally eliminate the need for regulatory requirements imposed by section 214, we have granted a blanket section 214 authorization to non-dominant carriers such that they no longer must obtain prior approval to provide domestic long distance service or add new facilities and we impose less stringent requirements on non-dominant carriers that are discontinuing service. 47 CFR §§ 63.07, 63.71. Section 63.07 requires non-dominant carriers to report the acquisition or construction of initial or additional circuits to the Commission on a semi-annual basis, while section 63.71 imposes certain notification requirements on non-dominant carriers that plan to reduce, impair, or discontinue service. We recognize that, for certain areas, such as those served by a single interexchange carrier or where equal access has not been implemented, it may still be appropriate for the Commission to review a carrier's proposal to discontinue service.

87. We recognize that certain aspects of dominant carrier regulation might constrain a BOC's ability to raise the costs of its affiliate's interLATA rivals or engage in other anticompetitive conduct. For example, requiring a BOC interLATA affiliate to file its tariffs with advance notice and cost support data might help to detect and prevent predatory pricing, particularly if coupled with a price floor on the affiliate's interLATA services. Price cap regulation of a BOC interLATA affiliate's interLATA services may deter a BOC from raising the costs of its affiliate's rivals through discrimination or other anticompetitive conduct by limiting the profit the affiliate could earn as a result of the anticompetitive conduct. As we stated in the Notice, however, price cap regulation of a BOC interLATA affiliate's interLATA services generally would not prevent a

BOC from raising its affiliate's rivals costs through discrimination or other anticompetitive conduct. Non-Accounting Safeguards NPRM at ¶ 132. It also would not prevent the affiliate from profiting from the BOC's raising rivals' costs through increased market share. *Id*. *See also* DOJ Aug. 30, 1996 Reply at 28 (impact of price cap regulation on affiliate pricing, and therefore its deterrence effect, is not so clear). Nevertheless, the fact that these measures might help to deter a BOC or its interLATA affiliate from engaging in certain types of anticompetitive conduct is not, by itself, a sufficient basis for imposing dominant carrier regulations on the BOC interLATA affiliates. We should also consider whether and to what extent these regulations would dampen competition and whether other statutory and regulatory provisions would accomplish the same objectives while imposing fewer burdens on the carriers and the Commission. Dominant carrier regulation should be imposed on the BOC interLATA affiliates only if the benefits of such regulation outweigh the burdens that would be imposed on competition, service providers, and the Commission.

88. The Commission has long recognized that the regulations associated with dominant carrier classification can dampen competition. For example, advance notice periods for tariff filings can stifle price competition and marketing innovation when applied to a competitive industry. In the Tariff Forbearance Order, we eliminated tariff filing requirements for non-dominant carriers pursuant to our forbearance authority under the Communications Act and ordered all non-dominant interexchange carriers to cancel their tariffs for interstate, domestic, interexchange services within nine months from the effective date of the Order. Tariff Forbearance Order at ¶ 3. As previously noted, the Tariff Forbearance Order is currently subject to a judicial stay. We concluded that a regime without non-dominant interexchange carrier tariffs for interstate, domestic, interexchange services will be the most pro-competitive, deregulatory system. We also found that not permitting non-dominant interexchange carriers to file tariffs with respect to interstate, domestic, interexchange services will enhance competition among providers of such services, promote competitive market conditions, and achieve other objectives that are in the public interest. We further concluded that continuing to require non-dominant interexchange carriers to file tariffs for interstate, domestic, interexchange services would reduce incentives for competitive price discounting, constrain carriers' ability to make rapid, efficient responses to changes in demand and cost, impose costs on carriers that attempt to make new offerings, and prevent customers from seeking out or obtaining service arrangements specifically tailored to their needs.

89. Requiring the BOC interLATA affiliates to file tariffs on advance notice and with cost support data would impose even more significant costs and burdens on the interLATA affiliates than the one-day notice period formerly required of non-dominant carriers and would adversely affect competition. Moreover, these requirements could undermine at least some of the benefits otherwise gained by eliminating tariff filing by non-dominant domestic interexchange carriers. In the Tariff Forbearance Order, we found that tacit coordination of prices for interstate, domestic, interexchange services, to the extent it exists, would be more difficult if we eliminate tariffs, because price and service information about such services provided by non-dominant interexchange carriers would no longer be collected and available in one central location. Upon full implementation of that Order, no interexchange carrier will be obligated (or permitted) to file tariffs for interstate, domestic, interexchange services. Upon full implementation of this Order, all domestic interexchange carriers will be regulated as non-dominant carriers. *See infra* section IV.B. If we were to require BOC interLATA affiliates to file tariffs for interstate, domestic, interexchange services, the ready availability of that information might facilitate tacit coordination of prices. We also believe that such requirements would impose significant administrative burdens on the Commission and the BOC interLATA affiliates, particularly to the extent they encourage the affiliates' interLATA competitors to challenge the affiliates' interLATA rates in order to impede the affiliates' ability to compete.

90. We find that the other regulations associated with dominant carrier classification can also have undesirable effects on competition. Although a price floor might help prevent a BOC interLATA affiliate from pricing below its cost, a price floor, if set too high, could prevent consumers from enjoying lower prices resulting from real efficiencies. The required cost support data can also discourage the introduction of innovative new service offerings, because it requires a carrier to reveal its financial information to its competitors.

91. As we discussed in the NPRM, we believe that other regulations applicable to the BOCs and their interLATA affiliates will address the anticompetitive concerns raised in the NPRM in a less burdensome manner. For example, a BOC's ability to engage in a ''price squeeze'' by raising its prices for access services (Under this scenario, a BOC would raise the price of access to all interexchange carriers, including its affiliate. This would cause competing interLATA carriers either to raise their retail interLATA rates in order to maintain the same profit margins or to attempt to preserve their market share by not raising their prices to reflect the increase in access charges, thereby reducing their profit margins. If the competing in-region interLATA service providers raised their prices to recover the increased access charges, the BOC interLATA affiliate could seek to expand its market share by not matching the price increase. *See infra* ¶ 125.) (as opposed to a BOC affiliate's lowering its long distance prices even when the BOC has not lowered its access prices) is limited by price cap regulation of those services. The nondiscrimination and structural separation requirements set forth in section 272 and our rules thereunder, price cap regulation of the BOCs' exchange access services, and the Commission's affiliate transaction rules sufficiently reduce the risk of successful anticompetitive discrimination and improper allocation of costs. We agree with DOJ that applying dominant carrier regulation to an affiliate in a downstream market would be ''at best a clumsy tool for controlling vertical leveraging of market power by the parent, if the parent can be directly regulated instead.'' In the Non-Accounting Safeguards Order (62 FR 2927 (January 21, 1997)) and Accounting Safeguards Order (62 FR 10220 (March 6, 1997)), we adopted regulations to constrain the BOCs' ability to use their market power in local exchange and exchange access services to engage in anticompetitive conduct in competitive markets. We therefore reject AT&T and MCI's contention that a BOC's ability to engage in such conduct would provide a legitimate basis for classifying its affiliate as dominant in the provision of in-region, interstate, domestic, interLATA services.

92. We find that the entry of the BOC interLATA affiliates into the provision of interLATA services has the potential to increase price competition and lead to innovative new services and marketing efficiencies. We see no reason to saddle the BOC interLATA affiliates

with regulations that are not well-suited to prevent the risks associated with BOC entry into in-region, interstate, domestic, interLATA services. We, therefore, conclude that the BOC interLATA affiliates should be classified as dominant carriers only if they have the ability to raise prices by restricting their own output.

2. Classification of BOC InterLATA Affiliates in the Provision of In-Region, Interstate, Domestic, InterLATA Services

a. Traditional Market Power Factors (other than control of bottleneck facilities)

i. Background

93. In the *Non-Accounting Safeguards NPRM*, we noted that, in determining whether a firm possesses market power, the Commission has previously focused on certain well-established market features, including market share, supply and demand substitutability, the cost structure, size or resources of the firm, and control of bottleneck facilities. We sought comment on the application of these factors in determining whether the BOC interLATA affiliates should be classified as dominant or non-dominant.

ii. Comments

94. Most commenters that address the issue agree that each of the traditional market factors weighs in favor of classifying the BOC interLATA affiliates as non-dominant. According to Ameritech, it is inconceivable that a BOC interLATA affiliate ''could bring AT&T to its knees quickly'' because the affiliates will enter the long-distance market with no customers, no traffic, no revenues, and no presubscribed lines and will be competing against some 500 incumbent carriers, including AT&T, MCI and Sprint, all of which are well-established in the market. Ameritech and U S West also claim that, in considering whether to classify the BOC interLATA affiliates as dominant, the Commission should consider only whether the BOC interLATA affiliates will have market power upon entry, not whether they will ''quickly gain'' such market power.

95. The California Cable Television Association (CCTA) contends, however, that a BOC interLATA affiliate's initial zero market share should not dissuade the Commission from retaining dominant carrier regulation because, as an entity affiliated with the dominant provider in the state, it will have enormous advantages particularly in terms of brand identification. CCTA further argues that it is likely that these affiliates will seek to capitalize on their parental lineage by using some or all of the BOCs' logos or other branding mechanisms. LDDS asserts that market share in and of itself is not a measure of market power, but rather is one of many possible indications that market power may exist in a certain market.

iii. Discussion

96. We find that each of the traditional market factors (excluding bottleneck control) supports a conclusion that the BOC interLATA affiliates will not have the ability to raise price by restricting their output upon entry or soon thereafter. As stated in the NPRM, the fact that each BOC interLATA affiliate initially will have zero market share in the provision of in-region, interstate, domestic, interLATA services suggests that the affiliate will not initially be able to raise price by restricting its output. As discussed in the NPRM, however, we find that this factor is not conclusive in determining whether a BOC interLATA affiliate should be classified as dominant, because the affiliate's zero market share results from its exclusion from the market until now, and, the affiliate potentially could gain significant market share upon entry or shortly thereafter, because of its brand identification with in-region customers, possible efficiencies of integration, and the BOC's ability potentially to raise the costs of its affiliate's interLATA rivals.

97. As to supply substitutability, we note that the Commission has previously found that the excess capacity of AT&T's competitors is sufficient to constrain AT&T's exercise of market power. In light of that finding, we conclude that AT&T and its competitors, which currently serve all interLATA customers, should be able to expand their capacity sufficiently to attract a BOC interLATA affiliate's customers if the affiliate attempts to raise its interLATA prices. As we discussed in the NPRM, the Commission also recently found that the purchasing decisions of most customers of domestic interexchange services are sensitive to changes in price, and customers would be willing to shift their traffic to an interexchange carrier's rival if the carrier raises its prices. The existence of such demand substitutability supports the conclusion that the BOC interLATA affiliates will not have the ability to raise prices by restricting their output. Finally, given the presence of existing interexchange carriers, including such large well established carriers as AT&T, MCI, Sprint, and LDDS, we find that the cost structure, size, and resources of the BOC interLATA affiliates are not likely to enable them to raise prices above the competitive level for their domestic interLATA services. Although the BOCs' brand identification and possible efficiencies of integration may give the BOC interLATA affiliates certain cost advantages in attracting customers, their lack of nationwide facilities-based networks would appear to put them at a disadvantage relative to the four largest interexchange carriers, as noted by Ameritech, particularly because the cost of resold long distances services will generally exceed the marginal cost of providing those services.

b. BOC Control of Bottleneck Access Facilities

i. Background

98. In the Non-Accounting Safeguards NPRM, we noted that, in assessing whether a BOC interLATA affiliate would possess market power in the provision of in-region, interstate, domestic, interLATA services, we must also consider the significance of the BOCs' current control of bottleneck exchange access facilities. We noted the concern that a BOC's control of bottleneck access facilities would enable it to allocate costs improperly from its affiliate's interLATA services to the BOC's regulated exchange or exchange access services, discriminate against its affiliate's interLATA competitors, and potentially engage in a price squeeze against those competitors. We therefore sought comment on whether the statutory and regulatory safeguards currently imposed on the BOCs and their affiliates are sufficient to prevent a BOC from engaging in such activities to such an extent that the BOC interLATA affiliates would quickly gain the ability to raise price by restricting output.

ii. Comments

99. Some of the BOCs dispute the Commission's assumption that the BOCs have and will maintain control of bottleneck access facilities. These commenters argue that any control the BOCs may have once had in the exchange access market has been dissipated by the Commission's expanded interconnection initiatives, the 1996 Act and the Commission's implementing regulations, and the actions of various states. In contrast, AT&T contends that the BOCs' monopoly control over local bottleneck facilities gives them market power in the interexchange market. Similarly, LDDS asserts that the BOCs will continue to possess market power in both the local exchange and exchange access markets, which translates into

market power in the in-region interLATA market. Many commenters also specifically address the three types of anticompetitive conduct listed above.

iii. Discussion

100. As noted in the Non-Accounting Safeguards NPRM, BOCs currently provide an overwhelming share of local exchange and exchange access services in areas where they provide such services—approximately 99.1 percent of the market as measured by revenues. Industry Analysis Division, Telecommunications Industry Revenue: TRS Worksheet Data, (Common Carrier Bureau December 1996). Tables 18 and 15 show that BOC local and access revenues in 1995 were $65.6 billion, while CAPs and Competitive LECs local and access revenues both in and out of BOC regions were only $595 million. Although the 1996 Act establishes a framework for eliminating entry barriers and thereby fostering local competition, the evidence to date indicates that such competition is still in its infancy. As a result, we conclude, solely for purposes of this proceeding, that the BOCs currently possess market power in the provision of local exchange and exchange access services in their respective regions, and we therefore must consider whether they can use that market power to give their interLATA affiliates the ability to raise the prices of in-region, interstate, domestic, interLATA services by restricting their own output of those services.

c. Improper Allocation of Costs

i. Comments

101. The BOCs and USTA assert that statutory and regulatory safeguards should prevent any improper cost allocations from occurring, particularly because all BOCs are subject to price-cap regulation, and a majority have adopted the no-sharing option. PacTel asserts that the concern over improper cost allocation ignores current regulation of the BOCs and presumes the incompetence of both state and federal regulators. AT&T counters that price cap regulation cannot eliminate the incentive to allocate costs improperly because both the initial caps and subsequent adjustments are generally set at least in part on the basis of the BOCs' profits during the preceding years. The Economic Strategy Institute asserts that cost accounting methodologies and models leave room for manipulation and interpretation. It also claims that improper cost allocation can lead to substantial cost advantages and facilitate a price squeeze.

102. The BOCs and USTA contend that it defies economic sense to expect any of the BOC interLATA affiliates to drive AT&T, MCI, or Sprint from the long-distance market. Even if they could, these commenters assert, the facilities of that carrier would remain intact, ready for another firm to buy at distress sale prices. AT&T, CTA, and DOJ argue, however, that the concerns expressed in the NPRM regarding improper cost allocation are too narrow. In addition to raising the possibility of predatory pricing, improper cost allocation may cause substantial harm to consumers, competition, and production efficiency. For example, improper cost allocation could lead to higher prices for local exchange and exchange access services and could shift market share and profits to a BOC interLATA affiliate, even if the affiliate is less efficient than its competitors, thereby resulting in a loss of production efficiency. AT&T asserts that such a strategy would be costless to the BOC, for it would recover its losses in the competitive market through contemporaneous higher rates in the non-competitive market. As a result, no subsequent recoupment would be necessary. According to DOJ, the Commission must consider whether applicable regulation would prevent improper cost allocation that would result in these adverse effects on consumers, competition, and production efficiency. DOJ argues that regulation alone will not prevent competitively significant improper cost allocations. The incentives to engage in such practices, according to DOJ, will be eliminated only when the local exchange market is subject to robust competition.

ii. Discussion

103. As noted in the Non-Accounting Safeguards NPRM, improper allocation of costs by a BOC is of concern because such action may allow a BOC to recover costs from subscribers to its regulated services that were incurred by its interLATA affiliate in providing competitive interLATA services. In addition to the direct harm to regulated ratepayers, this practice can distort price signals in those markets and may, under certain circumstances, give the affiliate an unfair advantage over its competitors. Recognizing this concern, Congress established safeguards in section 272, which we have implemented in the Non-Accounting Safeguards Order and Accounting Safeguards Order. For purposes of determining whether the BOC interLATA affiliates should be classified as dominant, however, we must consider only whether the BOCs could improperly allocate costs to such an extent that it would give the BOC interLATA affiliates, upon entry or soon thereafter, the ability to raise prices by restricting their own output. We conclude that, in reality, such a situation could occur only if a BOC's improper allocation enabled a BOC interLATA affiliate to set retail interLATA prices at predatory levels (i.e., below the costs incurred to provide those services), drive out its interLATA competitors, and then raise and sustain retail interLATA prices significantly above competitive levels. In so concluding, we do not dismiss cost misallocation as a potential problem. We recognize that the BOCs may have an incentive to misallocate the costs of their interLATA affiliates' interLATA services.

104. We conclude that applicable statutory and regulatory safeguards are likely to be sufficient to prevent the BOCs from improperly allocating costs between their monopoly local exchange and exchange access services and their affiliates' competitive interLATA services to such an extent that their interLATA affiliates would be able to eliminate other interLATA service providers and subsequently earn supra-competitive profits by charging monopoly prices. Section 272(b) includes a number of structural safeguards that constrain a BOC's ability to allocate costs improperly. For example, the provision requires a BOC interLATA affiliate to ''operate independently'' from the BOC, maintain separate books, records, and accounts from the BOC, and have separate officers, directors, and employees. Section 272 also requires each BOC ''to obtain and pay for a joint Federal/State audit every 2 years conducted by an independent auditor to determine whether such company has complied with [section 272] and the regulations promulgated under this section. . . .'' 47 U.S.C. § 272(d)(1). The results of such audits must be submitted to the Commission and the state commissions in each State in which the BOC provides services, which shall make such results available for public inspection. *Id.* § 272(d)(2). As noted by Ameritech and Bell Atlantic, the structural separation and audit requirements mandated in section 272 should reduce the risk of improper allocation of costs by minimizing the amount of joint costs that could be improperly allocated. In the Non-Accounting Safeguards Order, we adopted rules to implement and clarify these provisions. For example, we concluded that the requirement that

the BOC and its affiliate operate independently precludes the joint ownership of transmission and switching facilities by a BOC and its interLATA affiliate, as well as the joint ownership of the land and buildings where those facilities are located. Non-Accounting Safeguards Order at ¶158. We noted that prohibiting joint ownership of transmission and switching facilities would ensure that an affiliate must obtain any such facilities pursuant to the arm's length requirements of section 272(b)(5), thereby facilitating monitoring and enforcement of the section 272 requirements. Id. at ¶160. We also concluded that operational independence precludes a section 272 affiliate from performing operating, installation, and maintenance functions associated with the BOC's facilities. Likewise, it bars a BOC or any BOC affiliate, other than the section 272 affiliate itself, from performing operating, installation, or maintenance functions associated with the facilities that the section 272 affiliate owns or leases from a provider other than the BOC with which it is affiliated. *Id*. at ¶158. We concluded, however, consistent with these requirements and those established pursuant to sections 272(b)(5) and 272(c)(1), a section 272 affiliate may negotiate with an affiliated BOC on an arm's length and nondiscriminatory basis to obtain transmission and switching facilities, to arrange for collocation of facilities, and to provide or to obtain services such as administrative and marketing services. *Id*. We also clarified that section 272(b)(1) does not preclude a BOC or a section 272 affiliate from providing telecommunications services to one another, so long as each entity performs itself, or obtains from an unaffiliated third party, the operating, installation, and maintenance functions associated with the facilities that it owns or leases from an entity unaffiliated with the BOC. *Id*. at ¶164. As noted by BellSouth, the separate employee requirement should ensure that the cost of each employee will be attributed directly to the appropriate entity.

105. Section 272 also requires a BOC interLATA affiliate to conduct all transactions with the BOC on an arm's length basis, and all such transactions must be reduced to writing and made available for public inspection. In the Accounting Safeguards Order, we concluded that, to satisfy this requirement, a section 272 affiliate must, at a minimum, provide a detailed written description of the asset or service transferred and the terms and conditions of the transaction on the Internet within 10 days of the transaction through the company's Internet home page. Accounting Safeguards Order at ¶122. This information also must be made available for public inspection at the principal place of business of the BOC. *Id*. We conclude that these safeguards will constrain a BOC's ability to allocate costs improperly and make it easier to detect any improper allocation of costs that may occur.

106. We further find that price cap regulation of the BOCs' access services reduces the BOCs' incentive to allocate improperly the costs of their affiliates' interLATA services. As the Commission previously explained, ''[b]ecause price cap regulation severs the direct link between regulated costs and prices, a carrier is not able automatically to recoup improperly allocated nonregulated costs by raising basic service rates, thus reducing the incentive for the BOCs to shift nonregulated costs to regulated services.'' We recognize that under our current interim LEC price cap rules, a BOC can select an X-factor option that requires it to share interstate earnings with its customers that exceed specified benchmarks and permit the BOC to make a low-end adjustment if interstate earnings fall below a specified threshold. The X-factor is a component of the price cap formula that is used to adjust the price cap index for a LEC's access services each year to account for changes in telephone companies' costs per unit of output. Consequently, in certain circumstances, a BOC may have an incentive to allocate costs from interLATA services to access services in order to reduce the amount of profits the BOC is required to share with its interstate access service customers or become eligible for a low-end adjustment. Time Warner Aug. 15, 1996 Comments at 12–13. Similarly, the possibility of future re-calibration of price cap levels or out-of-band filings also implies that price cap regulation does not fully sever the link between regulated costs and prices. *See* 47 CFR § 61.49(e), (f). We note, however, that only one of the BOCs currently has adopted a sharing option. U S West is the only BOC currently subject to a sharing option. Data based on 1996 Annual Access Tariff Filings filed on April 2, 1996. *See also* USTA Aug. 15, 1996 Comments, Hausman Aff. at 8. We also note that the Commission has sought comment on whether the sharing option should be eliminated. Price Cap Performance Review for Local Exchange Carriers (60 FR 52362 (October 6, 1995)). Also, in the Access Charge Reform NPRM, we sought comment on whether we should reinitialize price cap indices and increase the X-factor. *See* Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; Usage of the Public Switched Network by Information Service and Internet Access Providers (62 FR 4657 (January 31, 1997)) at ¶¶223–35 (Access Charge Reform NPRM). Our affiliate transaction rules, which apply to transactions between the BOCs and their interLATA affiliates, should make it more difficult for a BOC to allocate improperly the costs of its affiliates' interLATA services. We also recognize that, if a state does not impose price cap regulation on a BOC's local exchange services, the BOC may have an incentive to allocate costs from interLATA services to its local exchange services. It appears, however, that many states have adopted price cap regulation or some other alternative form of regulation for the BOCs' local exchange services. Moreover, we are not persuaded that dominant carrier regulation of the BOC interLATA affiliates' interLATA services would prevent such improper cost allocation.

107. Furthermore, even if a BOC were able to allocate improperly the costs of its affiliate's interLATA services, we conclude that it is unlikely that a BOC interLATA affiliate could engage successfully in predation. At least four interexchange carriers—AT&T, MCI, Sprint, and LDDS WorldCom—have nationwide, or near-nationwide, network facilities that cover every BOC region. These are large well-established companies with millions of customers throughout the nation. It is unlikely, therefore, that a BOC interLATA affiliate, whose customers are likely to be concentrated in the BOC's local service region, (We recognize that action taken in concert by two or more BOCs could have a more significant impact on interLATA competitors, but believe that the antitrust laws and our enforcement process will sufficiently limit the risk of such concerted activity. Non-Accounting Safeguards Order at ¶70.) could drive one or more of these national companies from the market.

Even if it could do so, it is doubtful that the BOC interLATA affiliate would later be able to raise prices in order to recoup lost revenues. As Professor Spulber has observed, ''[e]ven in the unlikely event that [a BOC interLATA affiliate] could drive one of the three large interexchange carriers into bankruptcy, the fiber-optic transmission capacity of that carrier would remain intact, ready for another firm to buy the

capacity at distress sale and immediately undercut the (affiliate's) noncompetitive prices.''

108. We acknowledge that improper cost allocation may raise concerns beyond the risk of predatory pricing. As AT&T and DOJ assert, exploiting improper cost allocation to divert business to BOC interLATA affiliates from other, more efficient suppliers would be anticompetitive even if the latter suppliers remained in the market. DOJ contends that this strategy would produce inefficiencies and wasted resources and reduce future investment by competitors to improve or expand their networks and to develop innovative technologies and services. AT&T claims that such a strategy would be costless to the BOC, for it would recover its losses in the competitive market through contemporaneous higher rates in the non-competitive market, and, consequently, subsequent recoupment would be unnecessary. As previously stated, although we agree that these are serious concerns, we find that they do not establish a persuasive basis for classifying the BOC interLATA affiliates as dominant in the provision of in-region, interstate, domestic, interLATA services. Rather, such concerns are best addressed through enforcement of the section 272 requirements. We also note that DOJ contends that dominant carrier regulation will not prevent the BOCs from improperly allocating their affiliates' interLATA costs. In fact, DOJ asserts that the incentives to engage in such practices will be eliminated only when the local exchange market is subject to robust competition. As previously discussed, we conclude that dominant carrier regulation generally would not help prevent a BOC from improperly allocating costs.

d. Unlawful Discrimination

i. Comments

109. The BOCs suggest that concerns over the BOCs' incentives to discriminate are grossly exaggerated, given increasing competition in exchange and exchange access services (particularly after a BOC has satisfied the competitive checklist and other requirements in section 271) and the potential problem that customers would attribute degradation in service quality to the BOCs, rather than their interLATA affiliates' competitors. The BOCs further contend that, even if they did have the incentive to discriminate, they lack the ability to do so because of the nondiscrimination requirements in the 1996 Act and because of engineering obstacles to such selective degradation of service quality. Several BOCs also argue that discrimination is unlikely to be effective unless it is apparent to customers. According to the BOCs, if it is apparent to customers, however, it also is likely to be apparent to their long distance carrier and regulators that have the authority to enjoin any illegal practices. BellSouth and SBC contend that BOCs have a significant disincentive to provide inferior access to IXCs or otherwise jeopardize their relationship because the access charges paid by IXCs are a major source of revenue for the BOCs, and the IXCs increasingly will have the option of moving their exchange access traffic to alternative LECs and CAPs. Bell Atlantic and USTA claim that the BOCs have a long history of operating in other markets related to their local exchange and exchange access services without any adverse economic effects. They claim that, in each of the businesses that the BOCs have been allowed to enter since divestiture—cellular, voice messaging, customer premises equipment, and limited interLATA services—output has grown, prices have fallen and competitors have thrived. PacTel asserts that, if such discriminatory behavior could happen, it would already have happened.

110. A number of parties contend that, despite passage of the 1996 Act, BOCs have the incentive and ability to discriminate against their interLATA affiliates' long distance competitors. AT&T argues that the BOCs can discriminate against interexchange competitors in numerous and subtle ways that would be difficult to police. According to DOJ and Time Warner, the BOCs will retain the incentive and ability to discriminate against competitors until they are subject to actual, sustained competition in local telephone markets.

ii. Discussion

111. In the Non-Accounting Safeguards NPRM, we noted that a BOC potentially could use its market power in the provision of local exchange and exchange access services to discriminate against its interLATA affiliate's interLATA competitors to gain an advantage for its interLATA affiliate. We noted that there are various ways in which a BOC could attempt to discriminate against unaffiliated interLATA carriers, such as through poorer quality interconnection arrangements or unnecessary delays in satisfying its competitors' requests to connect to the BOC's network. Certain forms of discrimination may be difficult to police, particularly in situations where the level of the BOC's ''cooperation'' with unaffiliated interLATA carriers is difficult to quantify. To the extent customers value ''one-stop shopping,'' degrading a rival's interexchange service may also undermine the attractiveness of the rival's interexchange/local exchange package and thereby strengthen the BOC's dominant position in the provision of local exchange services. We continue to be concerned that a BOC could attempt to discriminate against unaffiliated interLATA carriers. For purposes of determining whether the BOC interLATA affiliates should be classified as dominant, however, we need to consider only whether a BOC could discriminate against its affiliate's interLATA competitors to such an extent that the affiliate would gain the ability to raise prices by restricting its own output upon entry or shortly thereafter.

112. The 1996 Act contains a number of nondiscrimination safeguards, which we have implemented in the Non-Accounting Safeguards Order and Accounting Safeguards Order. For example, section 272(c)(1) prohibits a BOC, in its dealings with its section 272 affiliate, from ''discriminat[ing] between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards.'' In the Non-Accounting Safeguards Order, we concluded that section 272(c)(1) requires a BOC to provide unaffiliated entities the same goods, services, facilities, and information that it provides to its section 272 affiliate at the same rates, terms, and conditions. We also concluded that a prima facie case of discrimination would exist under section 272(c)(1) if a BOC does not provide unaffiliated entities the same goods, services, facilities, and information that it provides to its section 272 affiliate at the same rates, terms, and conditions.Non-Accounting Safeguards Order at ¶ 212. To rebut the complainant's case, the BOC may demonstrate, among other things, that rate differentials between the section 272 affiliate and unaffiliated entity reflect differences in cost, or that the unaffiliated entity expressly requested superior or less favorable treatment in exchange for paying a higher or lower price to the BOC. *Id.* In addition, we concluded that, to the extent a BOC develops new services for or with its section 272 affiliate, it must develop new services for or with unaffiliated entities in the same manner.

113. Section 272(e) also includes a number of specific nondiscrimination requirements. For example, section

272(e)(1) requires a BOC to ''fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or its affiliates.'' In the Non-Accounting Safeguards Order, we concluded that the term ''requests'' includes, but is not limited to, initial installation requests, subsequent requests for improvement, upgrades or modifications of service, or repair and maintenance of these services. We also concluded that BOCs must disclose to unaffiliated entities information regarding service intervals in which BOCs provide service to themselves or their affiliates. Non-Accounting Safeguards Order at ¶ 241. In the Order, we sought further comment on specific information disclosure requirements that were proposed by AT&T in an ex parte letter filed after the official pleading cycle closed. *Id.* at ¶ 244. This disclosure requirement should promote compliance with section 272(e)(1) and allow competitors to resolve disputes informally rather than using the Commission's formal complaint process.

114. Section 272(e)(2) restricts the ability of a BOC to provide ''facilities, services, or information concerning its provision of exchange access to [its affiliate,] unless [it makes] such facilities, services, or information * * * available to other providers of interLATA services in that market on the same terms and conditions.'' Coupled with existing equal access and network disclosure requirements, this provision will limit the BOCs' ability to discriminate in the provision of such facilities, services, and information.

115. Section 272(e)(3) requires that a BOC charge its affiliate ''an amount for access to its telephone exchange service and exchange access that is no less than the amount [that the BOC charges] any unaffiliated interexchange carriers for such service.'' In the Non-Accounting Safeguards Order, we recognized that this provision serves to constrain a BOC's ability to engage in discriminatory pricing of its exchange and exchange access service.

116. We also find that the structural separation requirements of section 272(b) will constrain a BOC's ability to discriminate against its affiliate's interLATA competitors. As previously noted, we have interpreted the section 272(b)(1) requirement that a section 272 affiliate ''operate independently'' from the BOC to prohibit the joint ownership of transmission and switching facilities by the BOC and its affiliate. This requirement ensures that an affiliate must obtain any such facilities on an arm's length basis pursuant to section 272(b)(5), thereby increasing the transparency of transactions between a BOC and its affiliates. As we observed in the Non-Accounting Safeguards Order, ''[t]ogether, the prohibition on joint ownership of facilities and the nondiscrimination requirements should ensure that competitors can obtain access to transmission and switching facilities equivalent to that which section 272 affiliates receive.''

117. We recognize that the nondiscrimination requirements in the Communications Act are effective only to the extent that they are enforced. To this end, the 1996 Act gives the Commission specific authority to enforce the requirements of section 272 and the other conditions for in-region, interLATA entry incorporated in section 271(d)(3). Section 271(d)(6) provides that ''[i]f at any time after the approval of a [BOC application under section 271(d)(3)], the Commission determines that a [BOC] has ceased to meet any of the conditions required for such approval, the Commission may, after notice and opportunity for a hearing—(i) issue an order to such company to correct the deficiency; (ii) impose a penalty on such company pursuant to title V; or (iii) suspend or revoke such approval.'' In the Non-Accounting Safeguards Order, we concluded that this authority augments the Commission's existing enforcement authority. Section 271(d)(6) also specifies that the Commission must act within 90 days on a complaint alleging that a BOC has failed to meet a condition required for in-region, interLATA approval under section 271(d)(3).

118. In light of the 90-day deadline to act upon a 271(d)(6) complaint, we adopted certain measures in the Non-Accounting Safeguards Order to expedite the processing of these complaints. We also recently initiated a separate proceeding addressing the expedited complaint procedures mandated by this subsection as well as those mandated by other provisions of the 1996 Act. See Amendment of Rules Governing Procedures to be Followed When Formal Complaints are Filed Against Common Carriers (61 FR 67978 (December 26, 1990)). For example, once a complainant has demonstrated a *prima facie* case that a defendant BOC has ceased to meet the conditions of entry, the burden of production (i.e., coming forward with evidence) will shift to the BOC defendant. By shifting this burden of production, we have placed on the BOC an affirmative obligation to produce evidence and arguments necessary to rebut the complainant's *prima facie* case or face an adverse ruling. The complainant, however, will have the ultimate burden of persuasion throughout the proceeding; that is, to show that the ''preponderance of the evidence'' produced in the proceeding weighs in its favor. Non-Accounting Safeguards Order at ¶ 345. In the Non-Accounting Safeguards Order, we also concluded that, in addressing complaints alleging that a BOC has ceased to meet the conditions required for the provision of in-region interLATA services, we will not employ a presumption of reasonableness in favor of the BOC interLATA affiliate, regardless of whether the BOC or BOC interLATA affiliate is regulated as a dominant or non-dominant carrier. *Id.* at ¶ 351. The presumption of lawfulness given to nondominant carrier rates and practices is employed in the context of complaints alleging violations of sections 201(b) and 202(b), where the complaint must demonstrate that the defendant's rates and practices are ''unjust and unreasonable.'' We found that a presumption of reasonableness is an irrelevant concept in the context of complaints alleging violations of the conditions of interLATA approval in section 271(d)(3), particularly given our interpretation of section 272(c)(1) as an unqualified prohibition on discrimination. *Id.* We believe that these enforcement mechanisms will allow us to adjudicate complaints against the BOCs and BOC interLATA affiliates in a timely manner.

119. We conclude that the statutory and regulatory safeguards discussed above will prevent a BOC from discriminating to such an extent that its interLATA affiliate would have the ability, upon entry or shortly thereafter, to raise the price of in-region, interstate, domestic, interLATA services by restricting its output. We also conclude that imposing dominant carrier regulation on the BOC interLATA affiliates would not significantly aid in the prevention of most types of discrimination. Although the advance tariff filing requirement might help detect certain types of price discrimination, the marginal benefit of such regulation would be outweighed by the burdens such regulation would impose, as discussed above. *See supra* ¶¶ 88–90. Although AT&T expresses concern about the risk of discrimination, it suggests that the Commission should impose stringent non-discrimination requirements and reporting obligations in order to combat this problem. It does not contend that

dominant carrier regulation would help to prevent discrimination. We are not persuaded by Time Warner's assertion that dominant carrier regulation is necessary to ensure that the BOCs comply with their statutory obligation to charge affiliates rates equal to those charged unaffiliated carriers for telephone exchange and exchange access services. Rather, as discussed above, we conclude that the section 272 safeguards, coupled with the expedited enforcement mechanism, should provide an adequate means of ensuring that the BOCs comply with this requirement.

e. Price Squeeze

i. Comments

120. The BOCs generally argue that they do not have the ability to engage in a price squeeze by raising prices because their access prices are regulated. They also note that section 272(e)(3) requires BOCs to charge their affiliates the same access rates they charge unaffiliated carriers. PacTel claims that a true price squeeze would occur only if the price charged by the BOC interLATA affiliate was less than the BOC's marginal cost of access, plus the foregone contribution from that access, plus the affiliate's cost of providing the long distance service. PacTel contends that it would be irrational for a BOC interLATA affiliate to price below this level unless its object was predation, which is not a plausible strategy. On the other hand, according to PacTel, a BOC interLATA affiliate's acceptance of little or no profit in order to expand its market share, by itself, would not be a price squeeze and would not be anticompetitive. NYNEX claims that significant changes to local exchange service and access markets initiated by the Local Competition First Report and Order (61 FR 45476 (August 29, 1996)) make it unreasonable to fear that BOC access pricing could result in its affiliate's attaining long distance market power, particularly in light of the Commission's commitment to undertake and complete access reform within the next year.

121. Non-BOC commenters generally contend that the BOCs will have the incentive and ability to engage in a price squeeze, despite price cap regulation of the BOCs' access services and other applicable safeguards. The Economic Strategy Institute asserts that antitrust and economic literature generally supports the need for regulatory intervention in cases of price squeezes. MCI contends that the BOCs are most likely to exercise market power by assessing excessive prices for exchange access services for all carriers (including the BOCs' interLATA affiliates), and price cap regulation will not prevent this tactic because access rates are already excessive. MFS argues that, as long as a BOC is allowed to provide both essential services and competitive services, and as long as those essential services are priced above cost, a ''vertically integrated'' BOC can drive even more efficient rivals out of the market. MFS and MCI further assert that a price squeeze would not be limited to price increases in access services, but could also arise from the contribution BOCs earn on stimulated demand for access services created by competitors' forced price reductions to match a BOC interLATA affiliate price reduction. MCI claims that such a strategy could seriously harm competition. According to MCI, even if rivals remain in the market, they will be weakened by the cost increases they are forced to absorb, thereby reducing their output and the ''vigors of competition.''

122. LDDS asserts that the structural separation, accounting, and imputation requirements in the Communications Act do not adequately address the BOCs' access cost advantage because: (1) There is no way to ensure that a BOC interLATA affiliate's costs, other than for access, are reflected in its prices; (2) to the extent customers buy bundled local exchange, long distance, and other services from a BOC interLATA affiliate, the BOC interLATA affiliate could effectively evade imputation requirements by passing on its access cost advantage in reduced prices for services not subject to the Commission's direct jurisdiction, such as local exchange and information services; (3) a BOC will have the incentive and ability to favor its interLATA affiliate over its competitors in the provision of bundled local exchange and interLATA services; and (4) a BOC has the ability to discriminate against its affiliate's interLATA competitors on terms other than price.

123. MCI and AT&T argue that requiring cost support data and advance notice periods for tariff filings is important to ensure that the BOC interLATA affiliates are pricing their services above their costs. MFS, however, questions whether regulating BOC interLATA affiliates as dominant firms would be effective in preventing price squeezes. It contends that the only effective mechanisms for preventing this behavior are pricing BOC essential services at economic cost and developing competitive alternatives to the BOCs' essential services.

124. Ameritech disputes arguments that access charges are priced above economic costs and therefore will enable BOC interLATA affiliates to set interLATA rates below cost without incurring a loss. According to Ameritech, any subsidies in access are real costs that the BOC must recover in some manner in order to remain ''whole.'' Ameritech also claims that price squeeze arguments ignore the fact that BOC interLATA affiliates will pay access charges to unaffiliated carriers when they originate or terminate long distance calls out-of-region and that facilities-based incumbent carriers actually have significant cost advantages. Finally, Ameritech disputes the relevance of the price squeeze arguments. According to Ameritech, a BOC interLATA affiliate's ability to gain market share by setting rates below the cost of access would not constitute a basis for classifying the BOC interLATA affiliate as dominant. Ameritech is aware of no legal theory under which such a practice could be considered unreasonable or otherwise unlawful, since consumers would suffer no harm unless the BOC interLATA affiliate could somehow acquire market power from its action. Bell Atlantic and NYNEX claim that advance notice periods for tariff filings and cost support requirements are unnecessary to ensure compliance with the section 272 imputation requirement because the 1996 Act already provides for a biennial audit, which is intended to serve specifically as a check on compliance with the section 272 separation requirements, including the imputation requirement.

ii. Discussion

125. In the Non-Accounting Safeguards NPRM, we noted that, absent appropriate safeguards, a BOC potentially could raise the price of access to all interexchange carriers, including its affiliate. This would cause competing interLATA carriers either to raise their retail interLATA rates in order to maintain the same profit margins or to attempt to preserve their market share by not raising their prices to reflect the increase in access charges, thereby reducing their profit margins. If the competing in-region interLATA service providers raised their prices to recover the increased access charges, the BOC interLATA affiliate could seek to expand its market share by not matching the price increase. In that event, although the BOC interLATA affiliate would achieve lower profit margins than its rivals, all other things being equal, the BOC corporate entity as a whole would receive additional access revenues from unaffiliated carriers due to the access price increase and greater

revenues from the affiliate's interLATA services caused by its increased share of interLATA traffic. If the BOC were to raise its access rates high enough, it would be impossible for interexchange competitors to compete effectively. Thus, the entry of a BOC's affiliate into the provision of in-region, interstate, domestic, interLATA services might give the BOC an incentive to raise its price for access services in order to disadvantage its affiliate's rivals, increase its affiliate's market share, and increase the profits of the BOC overall. Non-Accounting Safeguards NPRM at ¶141. In the Notice, we recognized that the same situation could occur if a BOC failed to pass through to interexchange carriers a reduction in the cost of providing access services, and that price cap regulation would not be effective in eliminating the effect of a price squeeze initiated under these circumstances. *Id.* at ¶141 n.272.

126. We conclude, as discussed in the NPRM, that price cap regulation of the BOCs' access services sufficiently constrains a BOC's ability to raise access prices to such an extent that the BOC affiliate would gain, upon entry or soon thereafter, the ability to raise prices of interLATA services above competitive levels by restricting its own output of those services. *See* NYNEX comments at 57. We also note that the emergence of competition in the provision of exchange access service may also constrain a BOC's ability to raise access prices. *See id.;* SBC Aug. 30, 1996 Reply at 27. Although a BOC may be able to raise its access rates to some extent if those rates are currently below the applicable price cap and could fail to pass along reductions in the cost of access if the productivity factor is too low, we conclude that such an increase would not give a BOC affiliate the ability to raise prices of interLATA services above competitive levels by restricting its own output of those services. We will consider the impact of such a potential increase on competition in the pending access charge reform proceeding. We also note that the ability of competing carriers to acquire access through the purchase of unbundled elements enables them to avoid originating access charges and thus partially protect themselves against a price squeeze. *See* 47 U.S.C. § 252(d)(1)(A)(i). The Commission's pricing rules interpreting section 252(d)(1)(A)(i) are currently under stay by the 8th Circuit Court of Appeals. *Iowa Utilities Board* v. *FCC,* No. 96–3321, 1996 WL 589284 (8th Cir. Oct. 15, 1996) (order granting stay pending judicial review). To the extent that access charges are reformed to more closely reflect economic cost, as is being considered in the access charge reform proceeding, the potential for a price squeeze should be further mitigated.

127. Some commenters assert, however, that a BOC could engage in a price squeeze without raising the price of its access services. These commenters suggest that, because access services are currently priced above economic cost, a BOC interLATA affiliate could set its interLATA prices at or below the BOC's access prices and still be profitable. The affiliate's interLATA competitors would then be faced with the choice of setting their prices at unprofitable levels or losing market share. Several BOCs respond that this would not be a profit-maximizing strategy because the increased revenues they would receive from the affiliate's interLATA services would be offset by a reduction in the access revenues received from unaffiliated carriers. If the affiliate's reduction in interLATA rates sufficiently increased demand, however, it is possible the BOC interLATA affiliate's higher interLATA revenues would more than offset lost access revenues, assuming the affiliate's interLATA competitors do not match the affiliate's price reduction. If, in the alternative, the competitors reduce their interLATA rates to match the BOC interLATA affiliate's reductions, the BOC would receive increased access revenues. In the extreme, such a situation could drive the affiliate's rivals from the market. MCI claims that, even if such a predatory strategy is not successful, the rivals would be weakened by the cost increases they absorb, thereby reducing their output and their ability to compete effectively.

128. We conclude that imposing advance tariffing and cost support data requirements on the BOC interLATA affiliates would not be an efficient means of preventing the BOCs from engaging in such a predatory price squeeze strategy. As previously discussed, advance notice periods for tariff filings could reduce the BOC interLATA affiliates' incentives to reduce their interLATA rates. Furthermore, requiring the BOC interLATA affiliates to file cost support data could discourage them from introducing innovative new service offerings. We also conclude that imposing advance tariff filing and cost support data requirements on the BOC interLATA affiliates would not address LDDS' concern that the BOC interLATA affiliates could effectively evade imputation requirements by passing on their access cost advantage in reduced prices for services not subject to the Commission's jurisdiction, such as local exchange and information services. In addition, we believe that, if the predatory behavior described above were to occur, it could be adequately addressed through our complaint process and enforcement of the antitrust laws, coupled with the biennial audits required by section 272(d), such that the benefits of any protections offered by advance tariffing and cost support data requirements would be outweighed by the enormous administrative burden those requirements would impose on the Commission. A BOC interLATA affiliate that charges a rate for its interLATA services below its incremental cost to provide service would be in violation of sections 201 and 202 of the Communications Act, if such a rate were sustained for an extended period.

129. We also note that other factors constrain the ability of a BOC or BOC interLATA affiliate to engage in a predatory price squeeze. For example, a BOC interLATA affiliate's apparent cost advantage resulting from its avoidance of access charges may be offset by other costs it must incur, such as the cost of interLATA transport, which, at least initially, may be greater than the true marginal cost of interLATA transport for facilities-based interLATA carriers. In addition, a BOC interLATA affiliate will have to pay terminating access charges to LECs other than its BOC parent for calls terminating outside the BOC's region and to competing LECs in the BOC's in-region states. Having to pay such access charges reduces the cost disparity between the BOC interLATA affiliate and competing interexchange carriers. Finally, we note that a price squeeze strategy would give a BOC interLATA affiliate the ability to raise price by restricting its own output only if it is able to drive competitors from the market. As discussed previously, the existence of four nationwide, or near-nationwide, network facilities makes it unlikely that a BOC interLATA affiliate could successfully engage in a predatory strategy. As a result, we conclude that the BOCs or BOC interLATA affiliates will not be able to engage in a price squeeze to such an extent that the BOC interLATA affiliates will have the ability, upon entry or soon thereafter, to raise price by restricting their own output. Thus we do not believe that classifying a BOC's interLATA affiliate as a dominant carrier is necessary or appropriate to constrain the BOC and its affiliate from attempting to execute a predatory price squeeze.

130. We agree with commenters that assert that the risk of the BOCs engaging in a price squeeze will be greatly

reduced when interLATA competitors gain the ability to purchase access to the BOCs' networks at or near cost, and as competition develops in the provision of exchange access services. As noted, we believe that the ability of competing carriers to acquire access through the purchase of unbundled elements enables them to avoid originating access charges and thus partially protect themselves against a price squeeze. Moreover, to the extent that access charges are reformed to more closely reflect economic cost, as is being considered in the access charge reform proceeding, the potential for a price squeeze should be further mitigated.

f. Mergers or Joint Ventures Between Two or More BOCs

i. Background and Comments

131. In the Non-Accounting Safeguards NPRM, we sought comment on what effect, if any, a merger of or joint venture between two or more BOCs should have on our determination whether to classify the interLATA affiliate of one of those BOCs as dominant or non-dominant. Bell Atlantic, contends that the prospect of mergers between BOCs should not have any impact on whether the BOCs are treated as dominant because both parties to such a merger would be entering the long distance market with zero market share and in competition with well established competitors and because the merged company's access business would remain subject to all the same market and regulatory constraints as nonmerged BOCs. Sprint and the New York State Department of Public Service (NYPDS) contend that mergers, acquisitions, and similar combinations by BOCs may require consideration of geographic markets more expansive than a particular BOC's region.

ii. Discussion

132.We conclude that a merger of or joint venture between two or more BOCs should have no direct effect on our determination of whether to classify the interLATA affiliates of one of those BOCs as dominant or non-dominant. Bell Atlantic notes that, even though a merged company's territory would grow, it would continue to be subject to the same regulation currently imposed on the individual companies prior to the merger or joint venture. In the Non-Accounting Safeguards Order, we concluded that, upon completion of a merger between or among BOCs, the in-region states of a merged entity shall include all of the in-region states of each of the BOCs involved in the merger. Non-Accounting Safeguards Order at ¶ 69. We declined, however, to adopt a general rule that would treat the regions of merging BOCs as combined prior to completion of the merger, for the purposes of applying the section 272 separate affiliate and nondiscrimination safeguards. We found that adequate protections against discriminatory and anticompetitive conduct already applied to mergers, acquisitions, and joint ventures among BOCs. Id. Thus, the merged entity would be required to satisfy the requirements of sections 271 and 272 in providing interLATA services originating in those in-region states. We also note that DOJ is currently considering the implications of such mergers and joint ventures from an antitrust perspective.

g. Conclusion

133. Based on the preceding analysis, we conclude that the BOCs' interLATA affiliates will not have the ability, upon entry or soon thereafter, to raise the price of in-region, interstate, domestic, interLATA services by restricting their own output, and, therefore, that the BOC interLATA affiliates should be classified as non-dominant in the provision of those services. We note, however, that we retain the ability to impose some or all of the dominant carrier regulations on one or more of the BOC interLATA affiliates if this proves necessary in the future. As discussed in the NPRM, our experience with regulating the independent LECs' provision of interstate, domestic, interexchange services and the BOCs' provision of enhanced services suggests that our existing safeguards have worked reasonably well and generally have been effective, in conjunction with our regular audits, in deterring the improper allocation of costs and unlawful discrimination. Non-Accounting Safeguards NPRM at ¶ 146; PacTel Aug. 15, 1996 Comments at 65–66 (noting that PacTel has lost significant market share in intraLATA toll services and that Bell Atlantic and NYNEX have not gained significant market share in the provision of interLATA corridor services). We acknowledge, however, that there have been instances in which individual BOCs may have not complied with our non-structural safeguards in providing non-regulated services. *See id.* n. 284. *See* also MCI Aug. 15, 1996 Comments at 67 (referring to the MemoryCall case). We are not persuaded by MCI's argument that the Ninth Circuit's decision in California III (*California* v. *FCC,* 39 F.3d 919, 923 (9th Cir. 1994) (California III). In its Computer III decisions, the Commission removed the separate affiliate requirements applicable to AT&T and the BOCs, provided that they complied with certain nonstructural safeguards intended to guarantee that they offered their regulated network services to competing enhanced service providers on an equal and nondiscriminatory basis. The U.S. Court of Appeals for the Ninth Circuit vacated portions of the Commission's Computer III decisions in three separate decisions leads to the conclusion that we should impose dominant carrier regulation on the BOC interLATA affiliates. As discussed above, section 272 requires the BOCs to provide in-region, interLATA services through structurally separate affiliates. Since section 272's structural separation requirements are akin to those in Computer II, the Ninth Circuit's discussion of whether the Commission had adequately justified its elimination of the Computer II structural separation requirements for BOC enhanced services is not relevant here.

134. We believe that the entry of the BOC interLATA affiliates into the provision of in-region, interLATA services has the potential to increase price competition and lead to innovative new services and market efficiencies. We recognize that, as long as the BOCs retain control of local bottleneck facilities, they could potentially engage in improper cost allocation, discrimination, and other anticompetitive conduct to favor their affiliates' in-region, interLATA services. We conclude, however, that, to the extent dominant carrier regulation addresses such anticompetitive conduct, the burdens imposed by such regulation outweighs its benefits. We therefore see no reason to impose dominant carrier regulation on the BOC interLATA affiliates, given that section 272 contains numerous safeguards designed to prevent the BOCs from engaging in improper cost allocation, discrimination, and other anticompetitive conduct. Section 272(f)(1) of the Communications Act provides that the BOC safeguards set out in section 272, other than those prescribed in section 272(e), shall sunset three years after the date that the BOC affiliate is authorized to provide interLATA telecommunications services unless the Commission extends such three-year period by rule or order. We cannot now predict how competition will develop in local exchange markets nor can we determine at this time what accounting and non-accounting safeguards, if any, will be needed at that time. Accordingly, we recognize that it will be necessary for the Commission to determine what accounting and non-

accounting safeguards, if any, are necessary and appropriate upon expiration of those section 272 safeguards subject to sunset, and whether BOC interLATA affiliates should be classified as dominant or non-dominant in the provision of in-region, interstate, domestic, interLATA services. We emphasize that our decision to accord non-dominant treatment to the BOCs' provision of in-region, interLATA services is predicated upon their full compliance with the structural, transactional, and nondiscrimination requirements of section 272 and our implementing rules. We believe that these safeguards, coupled with other statutory and regulatory safeguards, are sufficient to prevent the BOC interLATA affiliates from gaining the ability, upon entry or shortly thereafter, to raise prices by restricting their output.

3. Classification of BOC InterLATA Affiliates in the Provision of In-Region, International Services

a. Background

135. In the Non-Accounting Safeguards NPRM, we tentatively concluded that we should apply the same regulatory treatment to a BOC interLATA affiliate's provision of in-region, international services as we apply to its provision of in-region, interstate, domestic, interLATA services, assuming the BOC or BOC interLATA affiliate does not have an affiliation with a foreign carrier that has the ability to discriminate against the rivals of the BOC or its affiliate through control of bottleneck facilities in a foreign destination market. Under this proposal, our current framework for addressing issues raised by foreign carrier affiliations would apply to the BOCs' provision of U.S. international services.

b. Comments

136. Most commenters support the Commission's proposal to apply the same regulatory treatment to the BOC interLATA affiliates' provision of in-region, international services as it applies to in-region, interstate, domestic interLATA services. PacTel and US West agree that if the BOC interLATA affiliates should be non-dominant for in-region domestic services, they should be non-dominant for in-region international services, but they further claim that differences in the domestic and international markets suggest that BOC interLATA affiliates should be classified as nondominant for international interLATA services regardless of their classification for domestic services. PacTel agrees that the existing rules governing dominance based on foreign market affiliations should apply to BOC interLATA affiliates as they do to all other international carriers. PacTel suggests, however, that the Commission should ensure that route-by-route dominance filings, based on foreign affiliations, be concluded no later than the grant of a section 271 entry petition.

137. MCI generally agrees with the Commission that a BOC's in-region international service should be treated in a manner similar to its in-region domestic interLATA service. It contends, however, that the BOCs have unique advantages in the international services market as a result of their ''regional focus.'' MCI expresses concern that the BOCs will enter into special arrangements with foreign carriers under which return traffic would be ''groomed''—*i.e.*, the foreign carrier would give the BOC's interLATA affiliate the return traffic that terminates in the BOC's region. MCI contends that, by contrast, non-BOC interexchange carriers would be required to take return traffic to destinations all over the United States and thereby incur higher costs in terminating such traffic. MCI notes that a disproportionate amount of international traffic terminates in the NYNEX and Pacific Bell regions and argues that these BOCs would have an especially lucrative opportunity to obtain groomed traffic. MCI notes that such arrangements may result in lower costs for terminating U.S. inbound traffic, but characterizes these arrangements as ''anticompetitive.'' It urges the Commission, at a minimum, to impose on the BOC interLATA affiliates the same safeguards that it imposed on MCI in the order approving British Telecom's (BT's) initial 20 percent investment in MCI. A number of the BOCs respond that such additional requirements are unnecessary and inappropriate.

c. Discussion

138. We adopt our tentative conclusion that we should apply the same regulatory treatment to a BOC interLATA affiliate's provision of in-region, international services as we apply to its provision of in-region, interstate, domestic, interLATA services. As discussed in the NPRM, the relevant issue in both contexts is whether the BOC interLATA affiliate can exploit its market power in local exchange and exchange access services to raise prices by restricting its own output in another market (the domestic interLATA or international market). We also note that the section 272 safeguards apply equally to the BOCs' in-region, domestic, interLATA and in-region, international services. We find no practical distinctions between a BOC's ability and incentive to use its market power in the provision of local exchange and access services to improperly allocate costs, discriminate against, or otherwise disadvantage unaffiliated domestic interexchange competitors as opposed to international service competitors.

139. In light of our classification of the BOC interLATA affiliates as non-dominant in the provision of in-region, interstate, domestic, interLATA services, we accordingly will classify each BOC interLATA affiliate as non-dominant in the provision of in-region, international services, unless it is affiliated, within the meaning of section 63.18(h)(1)(i) of our rules, with a foreign carrier that has the ability to discriminate against the rivals of the BOC or its affiliate through control of bottleneck services or facilities in a foreign destination market. We will apply section 63.10(a) of our rules to determine whether to regulate a BOC interLATA affiliate as dominant on those U.S. international routes where an affiliated foreign carrier has the ability to discriminate against unaffiliated U.S. international carriers through control of bottleneck services or facilities in the foreign destination market. The safeguards that we apply to carriers that we classify as dominant based on a foreign carrier affiliation are contained in Section 63.10(c) of our rules and are designed to address the incentive and ability of the foreign carrier to discriminate against the rivals of its U.S. affiliate in the provision of services or facilities necessary to terminate U.S. international traffic. Section 63.10(a) of the Commission's rules provides that: (1) Carriers having no affiliation with a foreign carrier in the destination market are presumptively non-dominant for that route; (2) carriers affiliated with a foreign carrier that is a monopoly in the destination market are presumptively dominant for that route; (3) carriers affiliated with a foreign carrier that is not a monopoly on that route receive closer scrutiny by the Commission; and (4) carriers that serve an affiliated destination market solely through the resale of an unaffiliated U.S. facilities-based carrier's switched services are presumptively nondominant for that route. See also Regulation of International Common Carrier Services, ¶¶ 19–24. This framework for addressing issues raised by foreign carrier affiliations will apply to the BOCs' provision of U.S. international

services as an additional component of our regulation of the U.S. international services market.

140. We reject MCI's suggestion that we should impose additional safeguards on the BOC's in-region, international services. We observe, as an initial matter, that all U.S. international carriers are subject to the same prohibition against accepting ''special concessions'' from foreign carriers that we imposed on MCI in the order approving BT's initial 20 percent investment in MCI. The grooming described by MCI would constitute a special concession prohibited by the terms of Section 63.14 of the Commission's rules to the extent the U.S. carrier entered into a grooming arrangement that the foreign carrier did not offer to similarly situated U.S. carriers. *See* 47 CFR Section 63.14 (''[a]ny carrier authorized to provide international communications service * * * shall be prohibited from agreeing to accept special concessions directly or indirectly from any foreign carrier or administration with respect to traffic or revenue flows between the United States and any foreign country served * * * and from agreeing to enter into such agreements in the future * * *.''). A U.S. carrier that negotiates a grooming arrangement with a foreign carrier on a particular route would be required to submit the arrangement to the Commission for public comment and review in circumstances where the arrangement deviates from existing arrangements with other U.S. carriers for the routing and/or settlement of traffic on that route.

141. We are not prepared to rule on this record, however, that the grooming of return traffic (i.e., giving a U.S. carrier the return traffic that terminates in a particular region) in a manner that may ultimately reduce U.S. carrier costs and rates is anticompetitive *per se*. We recently adopted guidelines for permitting in certain circumstances flexible settlement arrangements between U.S. and foreign carriers that do not comply with the International Settlements Policy (ISP). *Regulation of International Accounting Rates* (62 FR 5535 (February 6, 1997)) (*Accounting Rate Flexibility Order*). The ISP requires: (1) The equal division of accounting rates; (2) non-discriminatory treatment of U.S. carriers; and (3) proportionate return of U.S.-bound traffic. The ISP is designed to prevent foreign carriers with market power from obtaining discriminatory accounting rate concessions from competing U.S. carriers. *See generally* Policy Statement on International Accounting Rate Reform (61 FR 11163 (March 19, 1996)). MCI will have ample opportunity to make its arguments, with proper economic support, in the event a BOC interLATA affiliate or any other U.S. international carrier seeks to establish an arrangement for grooming return traffic.

142. We are also unpersuaded that the other conditions imposed in the 20 percent BT investment in MCI are useful or necessary in this case. MCI has not explained how those conditions are relevant to the BOC interLATA affiliates' provision of in-region international service on routes where they have no investment interest in or by a foreign carrier. The conditions imposed on MCI apply to its operations only on the U.S.-U.K. route, where we found that BT controlled bottleneck local exchange and exchange access facilities on the U.K. end, and they were targeted to limiting the potential risks of undue discrimination between a U.S. carrier (MCI) and a foreign carrier with which the U.S. carrier has an equity relationship (BT). We note that MCI and BT have requested Commission approval of the transfer of control to BT of licenses and authorization held by MCI subsidiaries, which would occur as a result of the proposed merger of MCI and BT. *See* MCI Communications Corporation and British Telecommunications PLC Seek FCC Consent for Proposed Transfer of Control, GN Docket No. 96–245, Public Notice, DA 96–2079 (rel. Dec. 10, 1996). To the extent a BOC has an equity interest in a foreign carrier or the foreign carrier has such an interest in a BOC on a particular U.S. international route, it is of course subject to Section 63.10 of our rules. This rule sets forth the framework for imposing certain safeguards on U.S. carriers that are affiliated with foreign carriers that have the ability to discriminate in the favor of their U.S. affiliate through the control of bottleneck services or facilities.

B. Classification of Independent LECs

143. For the reasons discussed below, we conclude that the requirements established in the Fifth Report and Order, together with other existing rules, sufficiently limit an independent LEC's ability to exercise its market power in the local exchange and exchange access markets so that the LEC cannot profitably raise and sustain the price of in-region, interstate, domestic, interexchange services by restricting its own output. We, therefore, classify independent LECs as non-dominant in the provision of these services. We recognize, however, that an independent LEC conceivably could use its control over local bottleneck facilities to allocate costs improperly, engage in unlawful discrimination, or attempt to price squeeze. We, therefore, impose the Fifth Report and Order separation requirements on all incumbent independent LECs that provide in-region, interstate, domestic, interexchange services. We further conclude that we should apply the same regulatory classification to the independent LECs' provision of in-region, international services that we adopt for their provision of in-region, interstate, domestic, interexchange services.

1. Classification of Independent LECs in the Provision of In-Region, Interstate, Domestic, Interexchange Services

a. Background

144. In the Competitive Carrier Fourth Report and Order, the Commission determined that interexchange carriers affiliated with independent LECs would be regulated as non-dominant carriers. In the Competitive Carrier Fifth Report and Order, the Commission clarified the definition of ''affiliate'' (The Commission defined a carrier affiliated with an independent LEC as ''a carrier that is owned (in whole or in part) or controlled by, or under common ownership (in whole or in part) or control with, an exchange telephone company.'' Fifth Report and Order, 98 FCC 2d at 1198, ¶ 9.) and identified three separation requirements that the affiliate must meet in order to qualify for non-dominant treatment. These requirements are that the affiliate: (1) Maintain separate books of account; (2) not jointly own transmission or switching facilities with the LEC; and (3) acquire any services from its affiliated exchange company at tariffed rates, terms, and conditions. The Commission further concluded that, if the LEC provides interstate, interexchange service directly, rather than through an affiliate, or if the affiliate fails to satisfy the three requirements, those services would be subject to dominant carrier regulation. The Commission observed that these separation requirements would provide some ''protection against cost-shifting and anticompetitive conduct'' by an independent LEC that could result from its control of local bottleneck facilities.

145. In the Non-Accounting Safeguards NPRM, we sought comment on how we should classify independent LECs' provision of in-region, interstate, interexchange services. We also sought comment on whether, absent the Fifth Report and Order separation requirements, an independent LEC would be able to use its market power

in local exchange and exchange access services to disadvantage its interexchange competitors to such an extent that it would quickly gain the ability profitably to raise and sustain the price of in-region, interstate, domestic interexchange service significantly above competitive levels by restricting its output. We suggested that, regardless of our determination of whether independent LECs should be classified as dominant or non-dominant, some level of separation may be necessary between an independent LEC's interstate, domestic, interexchange operations and its local exchange operations to guard against cost misallocation, unlawful discrimination, or a price squeeze. In addition, we sought comment on whether the existing Fifth Report and Order requirements are sufficient safeguards to apply to independent LECs to address these concerns.

b. Comments

146. Commenters generally suggest two different schemes for regulating independent LECs' provision of in-region, interstate, interexchange services. First, independent LECs and others argue that the Commission should find that independent LECS are non-dominant in their provision of in-region, interstate, interexchange services, and that the Fifth Report and Order requirements are no longer necessary. According to these commenters, the Commission should eliminate the existing Fifth Report and Order separate affiliate requirement as a precondition for non-dominant classification. In support of their contention that independent LECs should be regulated as non-dominant in their provision of in-region, interstate, interexchange services, these commenters argue that: (1) independent LECs do not have market power in the in-region, interstate, interexchange market based on the market power factors that the Commission applied in reclassifying AT&T as a non-dominant interexchange carrier; (2) dominant carrier regulation would reduce competition in the long distance market; (3) imposition of the Fifth Report and Order separations requirements on independent LECs' provision of in-region, interstate, interexchange service is inconsistent with the 1996 Act; and (4) the real costs of requiring any level of separation for independent LECs far outweighs the speculative benefits of separation.

147. In addition, these commenters assert that independent LECs have neither the ability nor the incentive to leverage the market power resulting from their control over local facilities to impede competition in the interexchange market. These commenters argue that their inability to leverage control over local facilities is attributable to several factors, including provisions of the 1996 Act that are designed to open the local market to competition; the geographic dispersion and largely rural nature of independent LEC service territories; cost accounting safeguards, price caps on access services, and regulations to prevent non-price discrimination in the quality of access services provided; and the interexchange carriers' increasing emphasis on constructing their own facilities.

148. GTE contends that the Commission is legally prohibited from imposing separation requirements on independent LECs in general, and specifically on GTE. GTE argues that section 601(a)(2) of the 1996 Act, which removes the restrictions and obligations imposed by the GTE Consent Decree, prohibits the Commission from imposing any separate affiliate requirements on GTE. In addition, GTE asserts that section 271 and 272 added by the 1996 Act, apply only to BOCs, therefore, these sections reflect Congress' determination that there is no need to extend the separation requirements of section 272 to independent LECs or GTE. Moreover, GTE maintains that, if the Commission continues to require separate affiliates, it should modify the Fifth Report and Order requirements to allow the affiliate to take exchange access services not only by tariff, but also on the same basis as other carriers that have negotiated interconnection agreements pursuant to section 251.

149. Sprint argues that the Fifth Report and Order separation requirements are no longer necessary because those requirements have been incorporated into the Commission's cost allocation rules.

150. In contrast, interexchange carriers, except Sprint, and competing access providers generally argue that the Commission not only should retain the Fifth Report and Order separation requirements as a condition for non-dominant treatment of independent LEC provision of in-region, interstate, interexchange services, but also should impose additional safeguards to prevent independent LECs from engaging in anticompetitive behavior by virtue of their control over bottleneck facilities.

151. Teleport argues that the Commission should impose quarterly reporting requirements that will enable competitors and the Commission to analyze objectively the independent LEC's service record and to compare service to competitors with service to itself or its affiliates. Teleport also recommends that the Commission implement an expedited complaint process to address service quality complaints by competing carriers.

152. AT&T argues that the Fifth Report and Order and our dominant carrier requirements are inadequate to address independent LECs' potential abuse of market power. AT&T contends that the Commission should, therefore, impose the same structural separation and non-discrimination requirements on independent LECs that we impose on BOCs, as well as a modified form of dominant carrier regulation. AT&T also asks the Commission to make clear that equal access requirements apply to independent LECs, including the requirement that a customer seeking local service from such carriers be offered the options for interexchange service in a neutral fashion. AT&T asserts that the Fifth Report and Order allows joint and integrated design, planning, and provisioning of exchange and interexchange services, which inherently discriminates against other carriers and permits the costs of long distance operations to be misallocated to monopoly ratepayers. In addition, AT&T, challenging SNET's claim that geographic rate averaging would mitigate the effects of any unilateral increase in access charges, asserts that access charges are far above cost, and that this enables LECs to impose a price squeeze in the interexchange market.

153. MCI asserts that, given the types of abuses that control over bottleneck facilities allows, it is necessary to review independent LECs' in-region, interexchange rates to ensure that they fully cover independent LEC tariffed access and other costs. MCI further contends that enforcement of the imputation requirement is necessary to protect against an independent LEC's adopting a price squeeze strategy, and maintains that the Commission's cost accounting rules and after-the-fact audits are insufficient to ensure that LEC interLATA rates cover imputed access costs. Like AT&T, MCI claims that, because an independent LEC's actual access costs are much lower than the tariffed rates, an independent LEC could adopt a successful price-squeeze strategy against its interexchange rivals. MCI adds that an independent LEC may be able to increase its total profits by reducing the price of its interLATA service, thereby increasing the demand for its switched access service.

154. The Commonwealth of the Northern Mariana Islands (CNMI) asserts that GTE-owned Micronesian

Telecommunications Corporation (MTC), which is the sole provider of both local exchange and exchange access services and a major provider of domestic and international off-island services in the Commonwealth, currently provides domestic, interexchange services on a nondominant basis, even though it lacks a separate subsidiary. CNMI asks the Commission to recognize explicitly that MTC must comply with the Fifth Report and Order separation requirements or comply with the Commission's dominant carrier requirements. CNMI also asks the Commission to devise specific safeguards applicable to MTC's monopoly operations in the Commonwealth, such as a strengthened form of the Fifth Report and Order separation requirements. GTE disputes CNMI's claims that MTC is providing domestic interexchange services directly as a non-dominant carrier contrary to the requirements of the Commission's Fifth Report and Order and 1985 International Competitive Carrier Order (50 FR 48191 (November 22, 1985)). GTE asserts that, although MTC provides domestic exchange, exchange access and interexchange services on an integrated basis, its domestic interexchange services are provided on a dominant basis. GTE emphasizes that neither the Commission nor any court has found that MTC has engaged in any misconduct of the nature alleged by CNMI. GTE also asserts that imposing additional regulatory requirements on MTC, which serves 16,000 access lines in a rural location, is clearly contrary to the deregulatory spirit and intent of the 1996 Act.

155. CNMI also asks the Commission to clarify that MTC's service between the Commonwealth and the U.S. mainland and other U.S. points is a domestic service, and thus requires domestic tariffing and compliance with the strengthened form of the Fifth Report and Order separation requirements. GTE responds that, because the Northern Mariana Islands have long been considered an international point for service to and from the United States, MTC currently tariffs its service to the U.S. mainland and other U.S. points in its international tariff. GTE contends that, pursuant to the Commission's Rate Integration Order, the integration of the Islands into domestic rate schedules is not required to occur until August 1, 1997. GTE states that these offshore locations will continue to be tariffed as international points for rate purposes until that time.

c. Discussion

i. Traditional Market Power Factors (Other Than Control of Bottleneck Facilities)

156. As we noted above, dominant carrier regulation is generally designed to prevent a carrier from raising prices by restricting its own output of interexchange services. An independent LEC, therefore, should be classified as dominant in the provision of in-region, interstate, interexchange services only if it has the ability to raise prices by restricting its output of these services.

157. We find that the traditional market power factors (excluding bottleneck control) suggest that independent LECs do not have the ability profitably to raise and sustain prices above competitive levels by restricting their output. Based on an analysis of these traditional market power factors—market share, supply and demand substitutability, cost structure, size, and resources—we conclude that independent LECs do not have the ability to raise prices by restricting their own output. First, independent LECs generally have minimal market share, compared with the major interexchange carriers, which suggests they could not profitably raise and sustain interexchange prices above competitive levels. Second, the same high supply and demand elasticities that the Commission found constrained AT&T's pricing behavior also apply to independent LECs. Finally, we find that low entry barriers in the interexchange market and widespread resale of interexchange services constrain independent LECs from exercising market power. We conclude, therefore, that in light of the Fifth Report and Order requirements independent LECs do not have the ability to raise prices above competitive levels by restricting their output of interexchange services.

ii. Control of Bottleneck Access Facilities

158. As we previously found with regard to the BOCs, traditional market power factors are not conclusive in determining whether independent LECs should be classified as dominant in the provision of in-region, interstate, interexchange services. We noted in the Non-Accounting Safeguards NPRM that an independent LEC may be able to use its control over local exchange and exchange access services to disadvantage its interexchange competitors to such an extent that it will quickly gain the ability profitably to raise the price of in-region, interstate, interexchange services above competitive levels. We therefore must examine whether an independent LEC could improperly allocate costs, discriminate against its in-region competitors, or engage in a price squeeze to such an extent that the independent LEC would have the ability to raise prices for interstate, interexchange services by restricting its output. We find, as we did with regard to BOCs, that independent LECs providing in-region, interstate, interexchange services do not have the ability to engage in these actions to such an extent that they would have the ability to raise prices by restricting output. For the reasons discussed with regard to the BOCs, we thus conclude that dominant carrier regulation of independent LEC provision of in-region, interstate, interexchange services is inappropriate.

159. We disagree, however, with those commenters that assert that independent LECs have no ability to use their bottleneck facilities to harm interexchange competition. We believe that, absent appropriate and effective regulation, independent LECs have the ability and incentive to misallocate costs from their in-region, interstate, interexchange services to their monopoly local exchange and exchange access services within their local service region. Improper allocation of costs by an independent LEC is a concern because such action may allow the independent LEC to recover costs incurred by its affiliate in providing in-region, interexchange services from subscribers to the independent LEC's local exchange and exchange access services. As we stated previously, this can distort price signals in those markets and, under certain circumstances, may give the affiliate an unfair advantage over its competitors. We believe that the improper allocation of costs may cause substantial harm to consumers, competition, and production efficiency. Such cost misallocations may be difficult to detect and are not necessarily deterred by price cap regulation.

160. Furthermore, an independent LEC, like a BOC, potentially could use its market power in the provision of exchange access service to advantage its interexchange affiliate by discriminating against the affiliate's interexchange competitors with respect to the provision of exchange and exchange access services. This discrimination could take the form of poorer quality interconnection or unnecessary delays in satisfying a competitors' request to connect to the independent LEC's network.

161. We are also concerned that an independent LEC could potentially

initiate a price squeeze to gain additional market share. Absent appropriate regulation, an independent LEC could potentially raise the price of access to all interexchange carriers which would cause competing in-region carriers to either raise their retail rates to maintain the same profit margins or attempt to maintain their market share by not raising their prices to reflect the increase in access charges, thereby reducing their profit margins. If the competing in-region, interexchange providers raised their prices to recover the increased access charges, the independent LEC could seek to expand its market share by not matching the price increase. The independent LEC could also set its in-region, interexchange prices at or below its access prices. The independent LEC's in-region competitors would then be faced with the choice of lowering their retail rates, thereby reducing their profit margins, or maintaining their retail rates at the higher price and risk losing market share.

162. As we explained earlier, the Fifth Report and Order identified three separation requirements with which an independent LEC must comply in order to qualify for non-dominant treatment. These requirements are that the affiliate providing in-region, interstate, interexchange services must: (1) maintain separate books of account; (2) not jointly own transmission or switching facilities with the LEC; and (3) acquire any services from its affiliated exchange companies at tariffed rates, terms, and conditions.

163. We conclude that, although an independent LEC's control of exchange and exchange access facilities may give it the incentive and ability to engage in cost misallocation, unlawful discrimination, or a price squeeze, the Fifth Report and Order requirements aid in the prevention and detection of such anticompetitive conduct. We, therefore, conclude that we should retain the Fifth Report and Order separation requirements. More specifically, separate books of account are necessary to trace and document improper allocations of costs or assets between a LEC and its long-distance affiliate as well as discriminatory conduct. In addition, the prohibition on jointly-owned facilities will reduce the risk of improper cost allocations of common facilities between the independent LEC and its interexchange affiliate. The prohibition on jointly owned facilities also helps to deter any discrimination in access to the LEC's transmission and switching facilities by requiring the affiliates to follow the same procedures as competing interexchange carriers to obtain access to those facilities. Finally, we conclude that requiring services to be taken at tariffed rates, or as discussed below, on the same basis as requesting carriers that have negotiated interconnection agreements pursuant to section 251, aids in preventing a LEC from discriminating in favor of its long distance affiliate, and reduces somewhat the risk of a price squeeze to the extent that an affiliate's long distance prices are required to exceed their costs for tariffed services.

164. We agree that we should modify the third Fifth Report and Order requirement to allow independent LECs to take exchange services not only by tariff, but also on the same basis as requesting carriers that have negotiated interconnection agreements pursuant to section 251. GTE contends that, because under the Commission's current rules, LECs must make interconnection agreements available to other carriers, affiliated carriers should be able to obtain services under such terms as well. 47 CFR 51.809. Section 252(i) states as follows:

> (i) Availability to Other Telecommunications Carriers.—A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement. 47 U.S.C 252(i).

The Commission's pricing rules and interpretation of section 252(i) are currently under stay by the 8th Circuit Court of Appeals. *Iowa Utilities Board* v. *FCC,* No. 96–3321 (8th Cir. October 15, 1996) (Order granting stay pending judicial review). In the Non-Accounting Safeguards Order, we concluded that section 272 does not prohibit a BOC interLATA affiliate from providing local exchange services in addition to interLATA services. We also found in that Order that section 251 does not place any restrictions on which telecommunications carriers may qualify as requesting carriers. We concluded in the Non-Accounting Safeguards Order, therefore, that BOC section 272 affiliates should be permitted to purchase unbundled elements under section 251(c)(3) of the Communications Act and telecommunications services at wholesale rates under section 251(c)(4) from the BOC on the same terms and conditions as other competing local exchange carriers. We find no basis for concluding that Congress intended to treat an incumbent LEC differently from any other requesting telecommunications carrier. Accordingly, in addition to taking exchange services by tariff, the LEC may alternatively take unbundled network elements or exchange services for the provision of a telecommunications service, subject to the same terms and conditions as provided in an agreement approved under section 252 to which the independent LEC is a party.

165. As argued by many commenters, independent LECs have been providing in-region, interstate, interexchange services on a separated basis with no substantiated complaints of denial of access or discrimination. The Fifth Report and Order separation requirements have been in place for over ten years. During that time, we have received few complaints from independent LECs about the requirements themselves. Moreover, we previously determined that the Fifth Report and Order requirements are not overly burdensome. As we stated in the Interim BOC Out-of-Region Order, the separation requirements of the Fifth Report and Order require that the LEC interexchange affiliate be a separate legal entity. We do not, however, require actual ''structural separation.'' Thus, as we stated in the Interim BOC Out-of-Region Order, ''except for the ban on joint ownership of transmission and switching facilities,'' the LEC and the interexchange affiliate ''will be able to share personnel and other resources or assets.''

166. We are not persuaded by the arguments made by Citizens and USTA that the separate affiliate requirement prevents independent LECs from realizing efficiency gains though the use of joint resources. While joint ownership of transmission and switching facilities by a LEC and its affiliate is not permitted by our rules, the use of transmission and switching facilities by the other is permitted. The affiliate can contract for use of the LEC's transmission and switching facilities at tariffed rates or on the same basis as requesting carriers that have negotiated interconnection agreements pursuant to section 251, and thereby continue to benefit from economies of scope. Furthermore, we conclude that the separate books of account requirement and the requirement that the affiliate obtain LEC services at tariffed rates are not overly burdensome. As we explained in the Interim BOC Out-of-Region Order, ''the separate books of account requirement refers to the fact that, as a separate legal entity, the affiliate must maintain its own books of account as a matter of course.'' Moreover, as we stated previously, in addition to taking exchange services by tariff, to the extent that the independent

LEC affiliate meets the requirements of 251, the LEC affiliate may alternatively take unbundled network elements or exchange services subject to the same terms and conditions as provided in an agreement approved under section 252 to which the independent LEC is a party.

167. While we recognize that the Fifth Report and Order requirements impose some regulatory burdens, we find that these burdens are not unreasonable in light of the benefits these requirements yield in terms of protection against improper cost allocation, unlawful discrimination, and price squeezes. We conclude that continued imposition of the Fifth Report and Order separation requirements is necessary to prevent and detect any anticompetitive conduct that may arise as a result of an independent LEC's control of bottleneck facilities.

168. We reject GTE's contention that the 1996 Act prohibits the Commission from imposing structural safeguards on GTE, or on any other independent LEC. We find no reasonable basis for inferring from section 601, or any other provision in the 1996 Act, that Congress intended to eliminate the Fifth Report and Order requirements or to repeal by implication our authority to impose on independent LECs separation requirements that we deem necessary to protect the public interest consistent with our statutory mandates. To the contrary, section 601(c)(1) of the 1996 Act provides that we are not to presume that Congress intended to supersede our existing regulations unless expressly so provided. Section 601(c) provides as follows:

> (c) Federal, State and Local Law.—
> (1) No Implied Effect.—This Act and the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments. Telecommunications Act of 1996, Public Law 104–104, sec. 601(c), 110 Stat. 56, 143 (to be codified as a note following 47 U.S.C. § 152).

Furthermore, section 601(a)(2) of the 1996 Act deals solely with a judicial decree, not the Commission's regulations; therefore, GTE's argument is frivolous.

169. We are also not persuaded by Sprint's arguments that the Fifth Report and Order requirements are no longer necessary because other Commission requirements, such as the Commission's access charge rules, imputation requirements, and cost allocation and affiliate transaction rules, prevent anticompetitive conduct by an independent LEC in providing in-region, interstate, interexchange services. While these other requirements have significant beneficial effects, we find that these regulations alone are not an adequate substitute for the Fifth Report and Order separation requirements. As previously discussed, the prohibition against jointly owned transmission and switching facilities ensures that the affiliate obtains such facilities on an arm's length basis. This requirement also helps to ensure that all competing in-region providers have the same access to provisioning of transmission and switching as that provided to the independent LEC's affiliate. There is nothing in the Commission's rules that otherwise prohibits joint ownership of switching and transmission facilities. Although Sprint contends that we should impose this prohibition by modifying the cost allocation rules, such a prohibition is possible only if a LEC provides interexchange service through a separate affiliate, as required by the Fifth Report and Order requirements. In addition, as stated previously, the Fifth Report and Order requirement that the affiliate maintain separate books of account is necessary to trace and document improper allocations of costs or assets between a LEC and its long distance affiliate and to detect unlawful discrimination in favor of the affiliate. The historical purpose for the requirement that the affiliate acquire any services from its affiliated exchange companies at tariffed rates, terms, and conditions was to prevent the LEC from discriminating in favor of its long distance affiliate. The Commission recently reconfirmed the need for such a requirement when it applied the affiliate transaction rules to all transactions between incumbent LECs and their affiliates. We believe that the Commission's access charge rules, imputation requirements, and cost allocation and affiliate transaction rules continue to serve important purposes. We conclude, however, that the Fifth Report and Order requirements are also necessary under these circumstances to safeguard further ratepayers against cost-shifting, discrimination, and price squeezes.

170. We reject the arguments that we should impose additional requirements on independent LECs, including section 272 requirements, certain aspects of dominant carrier regulation, or any other requirements. Independent LECs tend to be more geographically dispersed and their service territories are largely rural in nature, therefore, they generally serve areas that are less densely populated than BOC services areas. In addition, because the service areas of independent LECs tend to be smaller than the service areas of the BOCs, on average, independent LECs have fewer access lines per switch than BOCs and provide relatively little interexchange traffic that both originates and terminates in their region. We conclude, therefore, that independent LECs are less likely to be able to engage in anticompetitive conduct than the BOCs and that applying the section 272 requirements to independent LECs would be overly burdensome. The Fifth Report and Order requirements appear to balance these competing concerns; they address cost shifting and discrimination, but do not appear to be overly burdensome. Although the independent LECs assert that these requirements increase their costs, none of them has provided specific evidence to support this claim, much less to demonstrate that these additional costs outweigh the benefits.

171. As previously stated, we conclude that we should not apply dominant carrier regulation to independent LECs. The dominant carrier regulation that AT&T and MCI recommend is not necessary to prevent, nor effective in detecting improper cost allocation, unlawful discrimination, price squeezes, or other anticompetitive conduct. The benefits of dominant carrier regulation are outweighed by the burdens imposed on independent LECs. We also reject MCI's argument that we should maintain full dominant carrier regulation in order to enforce effectively the Commission's imputation requirements and to prevent independent LECs from engaging in a price squeeze strategy. As we stated previously, we believe that such predatory behavior can be adequately addressed through our complaint process and enforcement of the antitrust laws. Moreover, we note that the potential for a price squeeze will be further mitigated as access charges are reformed to reflect cost.

172. Furthermore, we confirm that the equal access restrictions apply to independent LECs. Under the MFJ the BOCs were required to ''provide to all interexchange carriers and information service providers exchange access, information access and exchange services for such access on an unbundled, tariffed basis, that is equal in type, quality, and price to that provided to AT&T and its affiliates.'' Equal access includes the nondiscriminatory provision of exchange access services, dialing parity, and presubscription of interexchange carriers. Exchange access services included, but were not limited to, ''provision of network control signalling, answer supervision,

automatic calling number identification, carrier access codes, directory services, testing and maintenance of facilities, and the provision of information necessary to bill customers.'' GTE became subject to similar requirements in 1984, and in 1985 the Commission imposed requirements on independent LECs similar to those imposed on GTE. As we stated in the Non-Accounting Safeguards Order, section 251(g) added by the 1996 Act preserves the equal access requirements in place prior to the passage of the Act, including obligations imposed by the MFJ and any commission rules. We do not decide at this time, however, whether the allegations AT&T raises regarding SNET's alleged pre-subscribed interexchange carrier (PIC) freeze constitutes a violation of the Commission's equal access requirements. AT&T or any other carrier, if it deems appropriate, can file a complaint with the Commission raising this allegation in the proper context. We note that on July 24, 1996, MCI filed an informal complaint with the Commission against SNET regarding PIC-freeze disputes. Letter from MCI to John Muleta, Chief, Enforcement Division, Common Carrier Bureau (July 24, 1996), Informal Complaint No. IC96–09734 (requesting the Commission to conclude that SNET's solicitations authorizing SNET to protect long distance customers from being switched without express consent violate section 201(b) and 251 of the 1996 Act.) In addition, on September 27, 1996, AT&T filed a letter with the Enforcement Division requesting the Commission to establish procedures under which neutral third parties administer PIC protection. Letter from AT&T to John Muleta, Chief, Enforcement Division, Common Carrier Bureau (Sept. 27, 1996).

173. Based on the foregoing, we conclude that we should require independent LECs to provide in-region, interstate, interexchange services through a separate affiliate that satisfies the Fifth Report and Order separation requirements. We further conclude that, in light of our finding that independent LECs do not have the power to raise and sustain interexchange rates above competitive levels, it would be inconsistent with our analysis to allow independent LECs to choose whether to be regulated as a dominant carrier when providing in-region, interstate, domestic interexchange services. We are aware, however, of three independent LECs, Union Telephone Company (of Wyoming) (Union), GTE Hawaiian Tel., and MTC, that currently provide interexchange services on an integrated basis subject to dominant carrier regulation.

We recognize that the costs of complying with the Fifth Report and Order separation requirements faced by a going concern could be greater than the costs of complying with these requirements for independent LECs that are currently providing these services on a separated basis. Accordingly, Union, GTE Hawaiian Tel., MTC, and any other independent LEC that is currently providing interexchange service on an integrated basis subject to dominant carrier regulation shall have one year from the date of release of this Order to comply with the Fifth Report and Order separation requirements. This does not affect the requirement that these providers integrate rates across their affiliates. See Rate Integration Order, 11 FCC Rcd 9598 (¶ 69). Until that time, the Commission will continue to regulate these independent LECs as dominant carriers. The record in this proceeding does not reflect special circumstances necessary for a waiver of one or more of these requirements. To the extent that special circumstances exist, however, independent LECs may petition us to establish the necessity of a waiver of the Fifth Report and Order requirements.

174. Because section 3(40) of the Communications Act defines a state to include the ''Territories and possessions'' of the United States, CNMI is a state for purposes of domestic telecommunications regulation. In our Rate Integration Order, we stated that, in making the section 254(g) of the Communications Act rate integration provision applicable to interstate interexchange services provided between the ''states,'' as defined by section 153(40) of the Communications Act, Congress made rate integration applicable to interexchange services provided between the contiguous forty-eight states and U.S. possessions and territories, including CNMI. In the Rate Integration Order, we required providers of interexchange services between the Northern Mariana Islands and the contiguous forty-eight states to do so on an integrated basis with other interexchange services they provide by August 1, 1997. MTC and all other carriers providing off-island services between CNMI and other states are required to comply with these requirements. We find no basis in the record of this proceeding to amend these requirements. We further note that, although our Rate Integration Order does not require providers of interexchange service to integrate services offered to subscribers in the Commonwealth until August 1, 1997, this does not affect our finding that, if MTC continues to provide in-region, interstate, interexchange service directly, it must continue to comply with our dominant carrier requirements prior to that date.

175. We find no basis on the record in this proceeding to impose additional requirements on MTC's provision of in-region, interstate, domestic, interexchange service, beyond those applied in this Order. To the extent that CNMI or any other petitioner can demonstrate that MTC has violated our rules, we encourage parties to file a petition asking the Commission to impose additional requirements through a petition for declaratory ruling or a complaint filed pursuant to section 208 of the Communications Act.

2. Application of Fifth Report and Order Separation Requirements to Incumbent Independent LECs

a. Background

176. In the Non-Accounting Safeguards NPRM, we tentatively concluded that, because an independent LEC's control of local exchange and exchange access facilities is our primary rationale for imposing a separate affiliate requirement on independent LECs, we should limit application of any separation requirements that we adopt in this proceeding to incumbent LECs that control local exchange and exchange access facilities. For purposes of determining which independent LECs are ''incumbent,'' we proposed to use the definition of ''incumbent local exchange carrier'' contained in section 251(h) of the Communications Act. Section 251(h) provides that a LEC is an incumbent LEC, with respect to a particular area, if: (1) the LEC provided telephone exchange service in that area on the date of enactment of the 1996 Act (February 8, 1996), and (2) the LEC was deemed to be a member of NECA on the date of enactment or the LEC became a successor or assign of a NECA member after the date of enactment.

b. Comments

177. AT&T agrees with the tentative conclusion that only those independent LECs that control local exchange or exchange access facilities should be subject to the requirements adopted in this proceeding and that the Commission should rely on the definition of ''incumbent local exchange carrier'' provided in 47 U.S.C. 251(h).

178. NTCA, on the other hand, contends that the Commission should treat new entrants no differently than it treats small incumbent LECs because

new LEC entrants that provide in-region interexchange services are free to, and have in fact, built or acquired control of local exchange access facilities.

c. Discussion

179. We adopt our tentative conclusion that the Fifth Report and Order separation requirements should be imposed only on incumbent independent LECs that control local exchange and exchange access facilities. We believe this conclusion is consistent with the 1996 Act, which provides different regulatory treatment for incumbent and non-incumbent LECs. This different treatment generally imposes fewer regulatory requirements on non-incumbent LECs, which we believe indicates Congress's view that such carriers are unable, at this time, to affect competition adversely, and therefore, are unable to generally harm consumers through unreasonable rates. We also believe that it would be premature to impose such regulation on competitive LECs when they possess little, if any, market power in the local exchange at this time. By limiting application of the separation requirements to incumbent independent LECs that control local exchange and exchange access facilities, we avoid imposing unnecessary regulation on new entrants in the local exchange market, such as neighboring LECs, interexchange carriers, cable television companies, and commercial mobile radio service providers, some of which may be small entities, thus facilitating market entry and the development of competition in the in-region, interstate, domestic, interexchange market.

3. Application of Fifth Report and Order Separation Requirements to Small or Rural Incumbent Independent LECs

a. Background

180. In the Non-Accounting Safeguards NPRM, we sought comment on whether there is some minimum size of independent LECs below which the separation requirements should not apply. We noted that, in principle, the size of a LEC will not affect its incentives to improperly allocate costs between its monopoly services and its competitive services, but that for small or rural independent LECs, the benefits to ratepayers of a separate affiliate requirement may be less than the costs imposed by such a requirement.

b. Comments

181. Several commenters contend that we should exempt certain small or rural independent LECs (e.g., non-Class A LECs or LECs serving less than two percent of the nation's access lines) from any separation requirements that are retained, because the costs of imposing the separations requirements on small carriers may outweigh the likely benefits. Several commenters argue that small incumbent LECs lack the market power to engage in anticompetitive conduct that is harmful to their interexchange rivals. Sprint argues that its local operations have little ability and incentive to engage in anticompetitive conduct, since its service territories are widely dispersed and largely rural.

182. GTE and Bell Atlantic argue that there is no economic basis for exempting small or rural independent LECs from the separation requirements imposed in this Order, especially given the increasing competition in local exchange and exchange access markets throughout the country. GTE argues that all independent LECs, small and large, generally serve areas that are less densely populated than BOC service areas, have fewer access lines per switch on average, and provide relatively small volumes of interexchange traffic that originates and terminates in their region.

c. Discussion

183. We conclude that we should not exempt any independent LECs from the Fifth Report and Order requirements based on their size or rural service territory because neither a carrier's size nor the geographic characteristics of its service area will affect its incentives or ability to improperly allocate costs or discriminate against rival interexchange carriers. Commenters favoring such an exemption provide no persuasive evidence that small or rural independent LECs that are not currently providing in-region interexchange service on an integrated basis subject to dominant carrier regulation would be adversely affected by continuation of the Fifth Report and Order separation requirements or that the safeguards are unnecessary for such carriers. Although suggested by several commenters, a rule that exempted all LECs with less than 2 percent of the nation's access lines would essentially eviscerate our regulation of independent LECs because it would exempt all 1100 independent LECs except the GTE companies (approximately 12 percent) and the Sprint/United companies (approximately 4 percent). Industry Analysis Division, Statistics of Communications Common Carriers 1996/96, (Com. Car. Bur. Dec. 1996), Tables 1.1, 2.3, and 2.10. Accordingly, we will continue to apply the Fifth Report and Order separation requirements to all independent LECs, regardless of size. As previously noted, an independent LEC may seek a waiver of the Fifth Report and Order requirements on the basis of special circumstances. *See supra* ¶ 173. We note, however, that a petitioner will face a heavy burden in demonstrating the need for such a waiver. Finally, we note that, although NTCA argues that the separation requirements may cause small companies to lose benefits in the form of name recognition and good will, the Fifth Report and Order requirements do not preclude an independent LEC from taking advantage of its good will by providing interexchange services under the same or a similar name.

4. Classification of Independent LECs' Provision of In-Region, International Services

a. Background

184. In the Non-Accounting Safeguards NPRM we tentatively concluded that we should apply the same regulatory treatment to an independent LEC's provision of international services originating within its local service area as we adopt for independent LEC provision of interstate, domestic, interexchange services originating within its local service area.

b. Comments

185. Most commenters support our proposal to apply the same regulatory treatment that we adopt for an independent LEC's provision of in-region interstate, domestic, interexchange services to an independent LEC's provision of in-region international services. GTE argues that the Commission should not impose the Fifth Report and Order requirements on independent LECs providing either in-region domestic or international interexchange services because independent LECs do not have market power in the provision of domestic or international in-region interexchange services. GTE notes that it, and some other carriers, may be subject to dominant classification on particular routes pursuant to the Foreign Carrier Entry Order due to foreign carrier affiliations.

186. MCI, on the other hand, argues that the Commission should generally apply the same regulatory treatment to independent LECs' provision of in-region, international services, but impose additional requirements where the LEC has a foreign affiliation or other commercial relationship with a foreign carrier. MCI urges the Commission, at a minimum, to impose on the independent LECs in such

circumstances the same safeguards that it imposed on MCI in the Order approving British Telecom's (BT's) initial 20 percent investment in MCI.

187. In addition, CNMI asks the Commission to clarify that MTC is a dominant carrier under the terms of the International Competitive Carrier Order. CNMI states that in the International Competitive Carrier Order, the Commission ruled that MTC's parent company, GTE Hawaii, and similarly situated carriers were dominant. CNMI claims, however, that MTC was not covered by these policies when the Commission issued this Order because CNMI did not become a U.S. commonwealth until November 3, 1986. CNMI asserts that, now that MTC is a domestic carrier with significant market power and a lack of effective competition in exchange and exchange access markets, the Commission should declare MTC dominant in its provision of in-region, interstate, international, interexchange service. GTE replies that imposing dominant regulation on MTC's provision of in-region, interstate, international, interexchange service now, when MTC has operated as non-dominant for years, would be contrary to the deregulatory goals of the 1996 Act. In any case, GTE asserts that independent LEC international and domestic interexchange services should be regulated in the same manner and that independent LECs have no market power in the international service market. GTE further claims that MTC's exchange access service in the Northern Mariana Islands cannot give it market power in the international services market.

c. Discussion

188. We confirm our tentative conclusion that we should adopt the same rules in this proceeding for an independent LEC's provision of in-region, international, interexchange services as we adopt for its provision of in-region, interstate, domestic, interexchange services. As discussed above with regard to BOC provision of in-region, international services, the relevant issue, with respect to both domestic interexchange and international services, is whether an independent LEC can exercise its market power in local exchange and exchange access services to raise and sustain prices of interexchange or international services above competitive levels by restricting its own output. We find no practical distinctions between an independent LEC's ability and incentive to use its control over bottleneck facilities in the provision of local exchange and exchange access services to improperly allocate costs, unreasonably discriminate against, or otherwise engage in anticompetitive conduct against unaffiliated domestic interexchange competitors as opposed to international services competitors. Consistent with our conclusion to limit application of the Fifth Report and Order requirements to incumbent independent LECs that control local exchange and exchange access facilities, for independent LECs providing in-region, international, interexchange services, we also limit application of the Fifth Report and Order separation requirements to incumbent independent LECs that control local exchange and exchange access facilities.

189. In light of our decision to classify independent LECs as non-dominant in the provision of in-region, interstate, domestic, interexchange services and to impose the Fifth Report and Order requirements, we will classify an independent LEC as non-dominant in the provision of in-region, international services, unless it is affiliated with a foreign carrier that has the ability to discriminate in favor of the independent LEC through control of bottleneck services or facilities in a foreign destination market. We will apply section 63.10(a) of our rules to determine whether to regulate a independent LECs as dominant on those U.S. international routes where an affiliated foreign carrier has the ability to discriminate against unaffiliated U.S. international carriers through control of bottleneck services or facilities in the foreign destination market. The safeguards that we apply to carriers that we classify as dominant based on a foreign carrier affiliation are contained in Section 63.10(c) of the rules and are designed to address the incentive and ability of the foreign carrier to discriminate in favor of its U.S. affiliate in the provision of services or facilities necessary to terminate U.S. international traffic. As previously noted, section 63.10(a) of the Commission's rules provides that: (1) Carriers having no affiliation with a foreign carrier in the destination market are presumptively non-dominant for that route; (2) carriers affiliated with a foreign carrier that is a monopoly in the destination market are presumptively dominant for that route; (3) carriers affiliated with a foreign carrier that is not a monopoly on that route receive closer scrutiny by the Commission; and (4) carriers that serve an affiliated destination market solely through the resale of an unaffiliated U.S. facilities-based carrier's switched services are presumptively nondominant for that route. See also Regulation of International Common Carrier Services, 7 FCC Rcd at 7334, ¶¶ 19–24. This framework for addressing issues raised by foreign carrier affiliations will apply to independent LECs' provision of U.S. international services as an additional component of our regulation of the U.S. international services market.

190. We reject MCI's suggestion that we should impose additional safeguards on the independent LEC's in-region, international services. As we stated with regard to the BOCs, all U.S. international carriers are subject to the same prohibition against accepting ''special concessions'' from foreign carriers that we imposed on MCI in the Order approving BT's initial 20 percent investment in MCI. The grooming described by MCI would constitute a special concession prohibited by the terms of Section 63.14 of the Commission's rules to the extent the U.S. carrier entered into a grooming arrangement that the foreign carrier did not offer to similarly situated U.S. carriers. *See* 47 CFR Section 63.14 (''[a]ny carrier authorized to provide international communications service * * * shall be prohibited from agreeing to accept special concessions directly or indirectly from any foreign carrier or administration with respect to traffic or revenue flows between the United States and any foreign country served * * * and from agreeing to enter into such agreements in the future * * * .''). A U.S. carrier that negotiates a grooming arrangement with a foreign carrier on a particular route would be required to submit the arrangement to the Commission for public comment and review in circumstances where the arrangement deviates from existing arrangements with other U.S. carriers for the routing and/or settlement of traffic on that route.

191. We believe our decision will benefit small incumbent LECs and small entities, for many of the same reasons enumerated in our analysis of independent LEC provision of in-region, interstate, domestic, interexchange services. For instance, by establishing a regulatory regime for provision of international services that is less stringent for incumbent independent LECs than for BOCs, independent LECs, some of which may be small incumbent LECs, will benefit by not being subjected to regulations that may be burdensome and may hamper competition in the international market. In addition, by limiting application of the Fifth Report and Order separations requirements to incumbent independent LECs, new entrants, some of which may

be small entities, will benefit from lower market entry costs.

192. We decline to address whether MTC should be regulated as a dominant carrier for the provision of international services because of the inadequate record in this proceeding. We note that CNMI or any other petitioner may petition us to initiate a proceeding regarding MTC's regulatory status. We reiterate, however, our conclusion that all independent LECs that are providing international interexchange service through an affiliate that satisfies the Fifth Report and Order separation requirements as of the date of release of this Order must continue to do so, and all other independent LECs providing international interexchange service must comply with the Fifth Report and Order separation requirements no later than one year from the date of release of this Order. The Commission's International Bureau recently granted GTE Hawaiian Tel.'s petition for reclassification as a non-dominant carrier in the Hawaiian market for international message telephone service (IMTS), subject to implementation by GTE Hawaiian Tel. of the Fifth Report and Order separation requirements which the Bureau imposed on an interim basis pending the outcome of this proceeding. Petition of GTE Hawaiian Telephone Company, Inc. for Reclassification as a Non-dominant IMTS Carrier, Order, DA 96–1748 (Int'l Bur. released Oct. 22, 1996). Our decision here does not modify the International Bureau's determination that GTE Hawaiian Tel. will remain a dominant IMTS carrier until it certifies to the Chief, International Bureau, that it is in compliance with the conditions of that Order. GTE Hawaiian Tel., must comply with the Fifth Report and Order separation requirements, however, within one year from January 1, 1997.

5. Sunset of Separation Requirements for Independent LECs

a. Background

193. Section 272(f)(1) of the Communications Act provides that the BOC safeguards set out in section 272 shall sunset three years after the date that the BOC affiliate is authorized to provide interLATA telecommunications services, unless the Commission extends such three-year period by rule or order. In the NPRM we requested comment on whether any regulation of independent LECs should be subject to some type of sunset.

b. Comments

194. Frontier contends that we should eliminate any separation requirements applicable to independent LECs' provision of in-region, interstate, interexchange services no later than such time as section 272 requirements sunset.

195. Excel and CNMI oppose the removal of the separate affiliate requirements applicable to independent LECs. CNMI notes that the sunset provision in section 272 has no application to independent LECs. Moreover, CNMI states that in insular areas such as the Commonwealth, there is no evidence to suggest that effective local competition will develop in the near future.

c. Discussion

196. We intend to commence a proceeding three years from the date of adoption of this Order to determine whether the emergence of competition in the local exchange and exchange access marketplace justifies removal of the Fifth Report and Order requirements. We believe that three years should be a reasonable period of time in which to evaluate whether effective competition has developed sufficiently to reduce or eliminate an independent LEC's bottleneck control of exchange and exchange access facilities.

V. Classification of BOCS and Independent LECS as Dominant or Non-Dominant in the Provision of Out-of-Region Interstate, Domestic, Interexchange Services

197. In this section, we consider whether the Competitive Carrier Fifth Report and Order separation requirements that were applied to the provision of out-of-region, interstate, domestic, interexchange services by independent LECs in the Competitive Carrier proceeding and to the provision of such services by the BOCs in the Interim BOC Out-of-Region Order are necessary as a condition for non-dominant regulatory treatment. As discussed below, we conclude that BOCs and independent LECs do not have and will not gain the ability in the near term to use their market power in the provision of local exchange service in their in-region markets to such an extent that the BOCs or independent LECs could profitably raise and sustain prices for out-of-region, interstate, domestic, interexchange services significantly above competitive levels by restricting their own output. We therefore classify the BOCs and independent LECs as non-dominant in the provision of these services. We also conclude that, at this time, a BOC or an independent LEC will not be able to raise significantly its interexchange rivals' costs by improperly allocating costs from its out-of-region interexchange services to its regulated exchange and exchange access services, unlawfully discriminating against its rivals, or engaging in a price squeeze in its provision of out-of-region, interstate, domestic, interexchange services. We therefore eliminate the separation requirements imposed in the Fifth Report and Order as a condition for non-dominant regulatory treatment of the BOCs and independent LECs in the provision of these out-of-region services.

A. Background

198. As previously noted, the Commission determined in the Competitive Carrier proceeding that interexchange carriers affiliated with independent LECs would be regulated as non-dominant carriers if they satisfied the three separation requirements identified in the Competitive Carrier Fifth Report and Order. *See supra* ¶ 144. The three requirements are that an affiliate: (1) Maintain separate books of account; (2) not jointly own transmission or switching facilities with the LEC; and (3) acquire any services from its affiliated exchange company at tariffed rates, terms, and conditions. Competitive Carrier Fifth Report and Order, 98 FCC 2d at 1198, ¶ 9. The Commission further concluded that, if the LEC provided the interstate, interexchange services directly, rather than through an affiliate, those services would be subject to dominant carrier regulation. Upon enactment of the 1996 Act, the BOCs were authorized to provide interLATA telecommunications services outside of their regions. In the Interim BOC Out-of-Region Order, the Commission determined that, on an interim basis, the BOCs' out-of-region, interstate, domestic, interexchange services would be subject to the same regulatory treatment as the Commission applied to the independent LECs' interstate, domestic, interexchange services in the Fifth Report and Order. Interim BOC Out-of-Region Order at ¶¶ 15–25. In other words, a BOC would be subject to non-dominant treatment in the provision of out-of-region, interstate, domestic, interexchange services if it provided these services through a separate affiliate that satisfied the Fifth Report and Order separations requirements, but would be regulated as dominant if it provided these services directly. *Id.* at ¶¶ 19–25. In the Interexchange NPRM, the Commission sought comment on whether it should modify or eliminate the separation requirements that are currently imposed on independent LECs and BOCs, in order to qualify for non-dominant

treatment in the provision of out-of-region interstate, interexchange services.

B. Comments

199. The BOCs and independent LECs generally argue that they cannot exercise market power if they provide directly out-of-region, domestic, interstate, interexchange services. Specifically, Ameritech asserts that the Commission may impose requirements as a condition of non-dominant treatment, such as a separate affiliate requirement, only if it can show that such a requirement is necessary to prevent the exercise of market power. Ameritech further argues that the Commission cannot possibly show that a separate affiliate requirement is necessary to prevent the exercise of market power in out-of-region interexchange services, and thus cannot link this requirement to non-dominant status. SBC argues that neither independent LECs nor new-entrant BOCs have market power in the provision of out-of-region interexchange services based on the market power factors listed in AT&T Reclassification Order. Furthermore, SNET asserts that the Competitive Carrier Fifth Report and Order separation requirements are not necessary for small independent LECs. The Ohio Consumer Counsel argues, however, that rural carriers without a national presence should be subject to separation requirements if they receive suspensions or modification of section 251(b) or (c) of the 1996 Act.

200. In addition, the BOCs and independent LECs generally claim that they no longer retain bottleneck control over exchange access services and that the Fifth Report and Order separation requirements are not necessary to prevent cross-subsidization and discrimination. Ameritech notes that the Commission has found that a firm or group of firms has ''bottleneck control'' when it has sufficient command over some essential commodity or facility in its industry or trade to be able to impede new entrants. Ameritech asserts that no BOC could impede long-distance entry because any such effort would be a blatant violation of equal access obligations and the Communications Act, and such an attempt would surely be discovered and punished. Furthermore, several LECs argue that to the extent bottleneck control previously existed, the 1996 Act eliminates it by requiring interconnection and access to unbundled elements and resale, and by creating incentives for BOCs to implement these provisions in order to enter in-region long-distance. Several BOCs further respond that they have neither the incentive nor the opportunity to cross subsidize their long distance services. NYNEX, BellSouth and GTE contend that separation requirements are unnecessary because the BOCs' rates for access services are subject to price caps. NYNEX asserts that Commission's rules control the allocation of costs between interexchange and access services and require LECs to impute to their interexchange services the same access rates they charge to other carriers for in-region services. Ameritech and Bell Atlantic argue that price caps (particularly without sharing) and cost allocation rules will prevent cross subsidization. Bell Atlantic also contends that geographic separation between a BOC's local exchange operations and out-of-region long distance services eliminates the potential for cost shifting.

201. Numerous non-LEC commenters, on the other hand, contend that the Commission should treat BOCs and independent LECs as non-dominant for out-of-region, interexchange services only so long as they satisfy the separation requirements in the Fifth Report and Order. CompTel argues that the focal point of any decision to classify a BOC as dominant or non-dominant in interexchange services will not be the level of competition in the interexchange market, but the extent to which the BOC has lost its monopoly power in local exchange and exchange access services. In addition, numerous commenters argue that the separation requirements are necessary to prevent cross-subsidization, unreasonable discrimination or other anticompetitive conduct. Sprint contends that the Fifth Report and Order requirements are the most, and perhaps the only, reliable tool at hand for detecting and preventing cross-subsidization and discrimination. The Missouri Commission claims that, unless LECs are required to maintain separate records for their LEC and IXC operations, it will be difficult, if not impossible, to determine whether any improper discrimination or cross subsidization has occurred. The Alabama Commission asserts that the separation requirements ensure that carriers can compete on an equal basis in the interexchange market. MCI argues that the continuing need for separate affiliate requirements is underscored by recent federal and state audits of BOC and LEC affiliate transactions, which uncovered improper cost allocations and demonstrated the ineffectiveness of the cost allocation regulations in preventing LEC cross-subsidies between regulated and unregulated services.

202. In addition, several commenters claim that the BOCs and independent LECs have significant incentives to engage in improper cost allocation, discrimination, and other anti-competitive behavior, and are able to engage in such behavior due to their control of bottleneck facilities. For example, MCI contends that the independent LECs' and BOCs' local bottleneck power can be exploited beyond their service areas by discriminating against an IXC dependent on the BOC or independent LEC for access in its region, thereby damaging the IXC's reputation on a national basis. MCI further asserts that the similarity, and in some cases identity, of facilities used for monopoly and interexchange services would greatly aggravate the risks of cross-subsidization and discrimination on the terminating end of such calls. Vanguard claims that, as suppliers of an essential input, BOCs are in a position to affect the cost structures of their competitors. More specifically, Vanguard argues that any increase in charges for terminating traffic will raise the costs of non-affiliated interexchange providers that terminate calls over the same route. Vanguard notes that these increases must be absorbed by competitors, but will not injure the BOC because raising access charges to its affiliate will merely result in an intracompany transfer. Commenters further contend that BOCs and independent LECs can discriminate in a variety of ways, such as slow service provisioning, delayed information about or roll-out of new technologies, less responsive maintenance and customer service, and poorer connections. MCI asserts that LECs also can exploit information obtained in their capacity as local service providers to gain an advantage in out-of-region interexchange marketing, including such information as validation databases, and that they can manipulate the price or other terms and conditions of terminating traffic, including limiting access to certain signalling information.

203. Several commenters contend that the cost and asset shifting techniques available to incumbent LECs are hard to detect and are not deterred by price caps. MFS disputes BOC arguments that geographical separation between the BOCs' in-region exchange access and out-of-region interexchange facilities and price cap regulation moot concerns about cost shifting. MFS asserts that a BOC's ability to fund anticompetitive pricing schemes in the interexchange market from local exchange market profits is not impeded just because these markets are not contiguous or because the BOC performs artificial cost

allocations. MFS argues that price cap mechanisms do not perfectly reflect actual cost changes and can yield windfall unintended profits for BOCs which could be used to subsidize interexchange services. AT&T contends that the BOCs' assertions that price cap regulation removes exchange carriers' ability and incentive to allocate costs improperly ignores the fact that not all LECs have elected price caps, and those that have may periodically elect a ''sharing'' option. MCI asserts that ''pure'' price caps do not deter cross subsidization because the conferring of monopoly-derived benefits upon a BOC's or independent LEC's interexchange operations at less than their economic value unfairly subsidizes those operations whether or not the BOC or LEC can raise its monopoly rates to absorb additional costs.

204. In addition, numerous commenters contend that even if the Fifth Report and Order separation requirements for independent LECs are modified or eliminated, the Commission should maintain these requirements as a condition for non-dominant treatment of the BOCs' provision of out-of-region, interexchange services. Vanguard and GSA contend that the BOCs have greater opportunity to allocate costs improperly than the independent LECs because of their greater number of services, larger service territories, and more extensive interoffice facilities. Vanguard notes, for example, that each BOC serves about one-eighth of all U.S. telephone subscribers in largely contiguous service territories, which means that the BOCs receive more calls than other LECs and have more opportunities to manipulate the price and quality of terminating access than other companies. Vanguard argues that the proposed BOC mergers would further widen the size differentials between the BOCs and independent LECs.

205. Several non-LECs contend that the Competitive Carrier Fifth Report and Order separation requirements are insufficient to protect against abuses by BOCs and independent LECs, and, therefore, propose additional safeguards. These commenters urge the Commission to: (1) Impose full structural separation on the out-of-region affiliate; (2) prohibit joint marketing of local and out-of-region, interexchange services; (3) require that a LEC's out-of-region affiliate have no preferential access to non-Title II services offered by the LEC; (4) require that the LEC's affiliate transaction practices and cost allocation procedures be subject to annual independent audit; and (5) prohibit the affiliate from receiving proprietary information unless it is made available to competitors on the same basis.

C. Discussion

206. In Section IV, we concluded that a BOC affiliate or independent LEC should be classified as dominant in the provision of in-region, interstate, domestic, long distance services only if it has the ability to raise prices by restricting its output of those in-region services. We found that each of the traditional market factors (excluding bottleneck control) suggest that the BOC interLATA affiliates and independent LECs do not have the ability to raise the price of in-region, interstate, long distance services by restricting their output of these services. We recognized that a BOC's or independent LEC's control of local exchange and exchange access facilities potentially gives the BOC or independent LEC an incentive to disadvantage its interexchange competitor through improper allocations of costs, discrimination or other anticompetitive conduct. We concluded, however, that the statutory and regulatory safeguards currently imposed on the BOCs and independent LECs will prevent them from engaging in such anticompetitive conduct to such an extent that the BOC interLATA affiliates or independent LECs have, or will have upon entry or shortly thereafter, the ability to raise the price of in-region, interstate, domestic, long distance services by restricting their output of these services. Accordingly, we classified the BOC interLATA affiliates and independent LECs as non-dominant in the provision of these in-region services.

207. We conclude that we should apply a similar analysis in assessing whether to classify the BOCs and independent LECs as dominant in the provision of out-of-region, interstate, domestic, interexchange services. We conclude that the traditional market power factors (excluding bottleneck facilities)—market share, supply and demand substitutability, cost structure, size, and resources—support a finding that the BOCs and independent LECs do not have, and will not gain the ability in the near term, to raise prices of out-of-region interexchange services by restricting their output of these services. More specifically, we find, first, that the BOCs begin with an interexchange market share of zero while the market shares of the independent LECs are negligible when compared to the major interexchange carriers. Second, we find that the same high supply and demand elasticities that the Commission found constrained AT&T's price behavior also apply to the provision of out-of-region interexchange services by the BOCs and independent LECs. Finally, we find that the presence of existing interexchange carriers, including AT&T, MCI, Sprint, and LDDS, prevents the BOCs and independent LECs from using their cost structure, size, and resources to raise prices above the competitive level for their out-of-region interstate, domestic, interexchange services.

208. With respect to discrimination concerns related to the provision of out-of-region, interstate, interexchange services by the BOCs and independent LECs, we note that these carriers are not the dominant providers of originating exchange access services in out-of-region areas. We also note that majority of the discrimination concerns raised by commenters focus on inferior interconnection to a LEC's network for originating exchange access. We therefore find that the BOCs' and independent LECs' lack of control over originating access for its competitors' calls originating outside its region significantly limits their ability to discriminate against their interexchange competitors and to engage in other anticompetitive conduct. Although it is possible that a LEC could damage an interexchange competitor's reputation on a national basis by discriminating against an interexchange carrier dependent on it for access in its region, we believe this is unlikely because the BOCs and independent LECs are subject to our equal access requirements. In addition, as discussed in Section IV, we believe that the safeguards in place for the provision of in-region, interstate, interexchange services by BOCs and independent LECs further protect against originating exchange access discrimination. We therefore conclude that our equal access provisions and safeguards established for in-region interstate, interexchange services provide sufficient protection to interexchange carriers for the provision of originating exchange access as well as for the quality of these services. Similarly, although a BOC or an independent LEC may control the facilities used to terminate its interexchange competitors calls in its in-region service area, we believe it has less opportunity to discriminate against competitors through its control of these facilities. In order to discriminate effectively through control of terminating exchange access, the BOCs and independent LECs would have to convince consumers that an inferior termination connection was the fault of their interexchange carrier, and that the only way to obtain efficient termination arrangements to this region would be

through the BOCs' or independent LECs' interexchange services. In addition, to the extent such quality degradation is apparent to consumers, it is also likely to be apparent to regulators and interexchange competitors. We also note that the record in the Interexchange proceeding does not demonstrate that the BOCs and LECs have the technical ability to degrade selectively the quality of the interconnection for their interexchange competitors through their control of terminating exchange access. In addition, Section 222 of the Communications Act provides all telecommunications carriers with protection from the misuse of customer proprietary network information. We, therefore, conclude that discrimination by a BOC or an independent LEC is unlikely in the context of out-of-region, interstate, interexchange services.

209. In addition, we agree with Bell Atlantic that the geographic separation between a LEC's in-region local exchange and exchange access operations and out-of region long distance operations mitigates the potential for undetected improper allocation of costs. Because of this geographic separation, it is unlikely that the out-of-region operation will be able to share any transmission or switching facilities, many employees, or other common costs with the in-region operation. Consequently, improper allocation of costs is less problematic with respect to a BOC's or independent LEC's provision of out-of-region long distance services. We further conclude that statutory and regulatory safeguards, including our Part 64 rules, imposed on the BOCs and independent LECs sufficiently limit any residual ability to disadvantage their rivals by improperly allocating costs between their regulated local exchange and exchange access services and their out-of-region interexchange services. Our cost allocation rules control the allocation of cost between interexchange and local services and require a BOC or an independent LEC to impute to its interexchange services the same access rates it charges other carriers. Furthermore, in the Accounting Safeguards Order, the Commission determined, solely for federal accounting purposes, that out-of-region interLATA services provided by incumbent LECs on an integrated basis should be treated like nonregulated activities for purposes of our cost allocation rules. We find that the existing statutory and regulatory safeguards, coupled with the geographical separation between the BOCs' and LECs' in-region and out-of-region operations, are sufficient to prevent the BOCs and independent LECs from improperly allocating costs. We therefore disagree with MFS' assertion that a LEC's ability to fund anticompetitive pricing schemes in the interexchange market from local exchange market profits exists even thought these markets are not contiguous or because the BOC performs artificial cost allocations. Furthermore, we note that the exchange access services for all of the BOCs and most of the largest independent LECs are subject to our price cap regulations. As discussed in Section IV, price cap regulation further serves to reduce the potential that the BOCs and independent LECs will improperly allocate the costs of their interexchange services. Consequently, we conclude that the risk that the BOCs and independent LECs would be able to allocate improperly substantial costs from their out-of-region interLATA services to their monopoly local exchange and exchange access services is not sufficient to warrant imposing separation requirements.

210. We also conclude that the BOCs and independent LECs will not be able to engage in a price squeeze with respect to their out-of-region, interstate, domestic, interexchange services to such an extent that they will gain the ability to raise prices of long distance services by restricting their output of those services. We are not persuaded by arguments that, because BOCs and independent LECs have control over terminating exchange access, they will be able to effect a price squeeze to gain market share by raising the price of terminating access. We note that, because the BOCs and independent LECs do not have control over originating exchange access for out-of-region, interstate, interexchange services, they will incur the same cost for originating access as their interexchange competitors. In addition, to the extent that a BOC or independent LEC offers out-of-region long distance services on an integrated basis, our rules require the carrier to impute to itself its tariffed terminating exchange access rate. Under section 64.901(b)(1) of our rules, tariffed services, such as exchange access services, provided to a nonregulated activity must be charged to the nonregulated activity at the tariffed rates and credited to the regulated revenue account for that service. 47 CFR § 64.901(b)(1). *See also* 47 CFR § 32.5280 (explaining how carriers must account for the provision of tariffed services to nonregulated activities). As previously noted, out-of-region interLATA services provided by incumbent LECs on an integrated basis are treated as nonregulated activities for federal accounting purposes. Accounting Safeguards Order at ¶ 75. If a BOC or independent LEC offers out-of-region long distance services through an affiliate, the affiliate will have to pay the tariffed exchange access rate for long distance calls it terminates on the BOC's or independent LEC's in-region network. We also note that section 272(e)(3) of the Communications Act requires a BOC to ''charge [its section 272 interLATA affiliate], or impute to itself (if using the access for its provision of its own services), an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such service.'' 47 U.S.C. § 272(e)(3). *See also* Non-Accounting Safeguards Order at ¶¶ 256–58 (implementing section 272(e)(3)). Also, price cap regulation of exchange access services mitigates the ability of a BOC or independent LEC to effect a price squeeze by increasing terminating exchange access rates. All BOCs and most of the largest independent LECs are subject to price cap regulation. 1996 Annual Access Tariff Filings, DA 96–1022, ¶ 2 n.2 (rel. June 24, 1996). All but one BOC is subject to price caps without sharing. Data based on 1996 Annual Access Tariff Filings filed on April 2, 1996. Moreover, we believe an attempted price squeeze would be less likely to be effective, because it appears that typically a BOC's originating out-of-region calls that terminate in-region will account for a small percentage of the BOC's total out-of-region originating traffic. We acknowledge, however, that some BOCs and independent LECs may market their out-of-region interexchange services to customers who routinely terminate in the BOC's or independent LEC's in-region local exchange and exchange access area. *See, e.g.,* AT&T Sept. 13 Reply, Appendix B. Finally, we note that there are other adequate mechanisms to address such behavior. More specifically, a BOC or an independent LEC that charges a rate for interstate services below its incremental costs of providing service in the long term would be in violation of sections 201 and 202 of the Act. In addition, Federal antitrust law also would apply to the predatory pricing of interstate services.

211. Based on the foregoing, we conclude that the BOCs and independent LECs do not have, upon entry or soon thereafter, the ability to raise the price of out-of-region,

interstate, interexchange services by restricting their own output even if they are permitted to provide these services on an integrated basis. We therefore conclude that it is not necessary to require the BOCs or independent LECs to maintain the Competitive Carrier Fifth Report and Order separation requirements as a condition for non-dominant regulatory treatment for the provision of out-of-region, interstate, interexchange services. We note, however, that because BOCs and independent LECs are required to offer in-region, interstate, interexchange services through a separate affiliate, some may provide their out-of-region, interstate, interexchange services through the same affiliate rather than directly. We further note that, in the Accounting Safeguards Order, the Commission determined that affiliate transactions rules apply to all transactions between incumbent local exchange carriers and their affiliates providing any of the competitive services of the types permitted under sections 260 and 271 through 276. Accounting Safeguards Order at ¶ 256. Upon the effective date of this Order, the requirements established herein for the provision of out-of-region, interstate, interexchange services by BOCs will supersede any conflicting requirements established in the Interim BOC Out-Of-Region Order.

212. Contrary to the comments of GSA and Vanguard, we find that the record in this proceeding does not demonstrate that a BOC is in a better position than an independent LEC to leverage its in-region monopoly power arising from its control of the local exchange to benefit its provision of out-of-region long distance services. We therefore conclude that there is no persuasive reason to implement different regulatory schemes for the BOCs and independent LECs in the context of their provision of out-of-region long distance services.

213. We also conclude that the Fifth Report and Order separation requirements and the additional safeguards suggested in the record, are not necessary to prevent the BOCs and independent LECs from raising the costs of their interexchange rivals' services originating outside the BOC's or independent LEC's region. As discussed above, we believe that other applicable safeguards, coupled with the geographic separation between the BOCs' and independent LECs' in-region and out-of-region operations will prevent a BOC or independent LEC from favoring its out-of-region interexchange services through improper allocation of costs, discrimination, or other anticompetitive conduct. Further, we found in the Interim BOC Out-of-Region Order that the commenters presented no persuasive evidence that showed additional safeguards were warranted to prevent improper allocation of costs and discrimination. In Section IV.B., we found that no party presented persuasive evidence in this proceeding that shows that it is necessary to impose additional safeguards on the independent LECs as a condition for non-dominant regulatory treatment for the provision of in-region, interstate, interexchange service. Consequently, we conclude that the Fifth Report and Order separation requirements and the proposed additional safeguards are unnecessary in this context, and should therefore be eliminated. With respect to small independent LECs, we note that this decision may promote their expansion into new telecommunications services and information services consistent with section 257 of the Act. *See* 47 U.S.C. § 257.

VI. Final Regulatory Flexibility Analysis

214. As required by Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in each of the two Notices of Proposed Rulemaking from which this Order issues. The Commission sought written public comment on the proposals in the NPRMs. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA).

A. Need for and Objectives of This Report and Order and the Regulations Adopted Herein

215. In the 1996 Act, Congress sought to establish ''a pro-competitive, de-regulatory national policy framework'' for the United States telecommunications industry. Three principal goals of the telephony provisions of the 1996 Act are: (1) Opening local exchange and exchange access markets to competition; (2) promoting increased competition in telecommunications markets that are already open to competition, particularly long distance services markets; and (3) reforming our system of universal service so that universal service is preserved and advanced as local exchange and exchange access markets move from monopoly to competition.

216. The regulations adopted in this Order implement the second of these goals—promoting increased competition in the interexchange market. The objective of the regulations adopted in this Order is to implement as quickly and effectively as possible the national telecommunications policies embodied in the 1996 Act and to promote the development of competitive, deregulated markets envisioned by Congress. In doing so, we are mindful of the balance that Congress struck between this goal of bringing the benefits of competition to all consumers and its concern for the impact of the 1996 Act on small incumbent local exchange carriers.

B. Analysis of Significant Issues Raised in Response to the IRFA

217. As noted above, this Order issues from two separate Notices of Proposed Rulemaking. In March 1996, the Commission released an NPRM asking, among other things, whether we should modify or eliminate the separation requirements imposed on independent LECs as a condition for non-dominant treatment of their out-of-region, interstate, domestic, interexchange services. In July 1996, we released an NPRM seeking comment on, in addition to other issues, whether to modify our existing regulations governing independent LECs' provision of in-region, interstate, domestic, interexchange services, and whether to apply the same regulatory treatment to their provision of in-region, international services.

218. Summary of the Initial Regulatory Flexibility Analyses (IRFAs). In each of the NPRMs, the Commission performed an IRFA. In the IRFA for the Interexchange NPRM, the Commission did not find that any of the issues that are addressed in this Order would have a significant economic impact on a substantial number of small businesses as defined by section 601(3) of the RFA. In the IRFA for the Non-Accounting Safeguards NPRM, the Commission certified that its proposed regulations would not, if promulgated, have a significant economic impact on a substantial number of small businesses as defined by section 601(3) of the RFA. We stated that our regulatory flexibility analysis was inapplicable to BOCs and other incumbent LECs because these entities are dominant in their field of operation.

1. Treatment of Small LECs

219. *Comments.* NTCA claims that its membership includes companies that constitute ''small business concerns'' under the RFA. NTCA argues that our IRFA in the Non-Accounting Safeguards NPRM incorrectly certifies that our proposed regulations will not have a significant economic impact on a

substantial number of small entities. NTCA states that the Small Business Administration (SBA) establishes size standards for small businesses that ''seek to ensure that a concern that meets a specific size standard is not dominant in its field of operation.'' NTCA states that the Commission cannot ignore SBA definitions and conclude that all incumbent LECs are dominant for purposes of the Regulatory Flexibility Analysis. NTCA recommends that we ''consider flexible regulatory proposals and analyze any significant alternatives that would minimize significant economic impacts'' of our regulations on its members that are small companies.

220. *Discussion.* NTCA essentially argues that we exceeded our authority under the RFA by certifying all incumbent LECs as dominant in their field of operation, and concluding on that basis that they are not small businesses under the RFA. We have found incumbent LECs to be ''dominant in their field of operation'' since the early 1980s, and we consistently have certified under the RFA that incumbent LECs are not subject to regulatory flexibility analyses because they are not small businesses. We have made similar determinations in other areas. While we recognize SBA's special role and expertise with regard to the RFA, we are not fully persuaded on the basis of this record that our prior practice has been incorrect. Nevertheless, in light of NTCA's concerns, we will conduct an analysis on the impact of our regulations in this Order on small incumbent LECs, in order to remove any possible issue of RFA compliance. We therefore need not address NTCA's argument that many of its members are ''small business concerns'' for purposes of the RFA.

C. Description and Estimates of the Number of Small Entities Affected by This Report and Order

221. In this FRFA, we consider the impact of this Order on two categories of entities, ''small incumbent LECs'' and ''small non-incumbent LECs.'' Consistent with our prior practice, we shall continue to exclude small incumbent LECs from the definition of a small entity for the purpose of this FRFA. Accordingly, our use of the terms ''small entities'' and ''small businesses'' does not encompass ''small incumbent LECs.'' We use the term ''small incumbent LECs'' to refer to any incumbent LECs that arguably might be defined by SBA as ''small business concerns.'' We include ''small non-incumbent LECs'' in our analysis, even though we believe that we are not required to do so.

222. For the purposes of this Order, the RFA defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act, 15 U.S.C. § 632, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be a small entity when it has fewer than 1,500 employees.

223. *Incumbent LECs.* SBA has not developed a definition of small incumbent LECs. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs that may be affected by the decisions and regulations adopted in this Order.

224. *Non-Incumbent LECs.* SBA has not developed a definition of small non-incumbent LECs. For purposes of this Order, we define the category of ''small non-incumbent LECs'' to include small entities providing local exchange services which do not fall within the statutory definition in section 251(h), including potential LECs, LECs which have entered the market since the 1996 Act was passed, and LECs which were not members of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations. We believe it is impracticable to estimate the number of small entities in this category. We are unaware of any data on the number of LECs which have entered the market since the 1996 Act was passed, and we believe it is impossible to estimate the number of entities which may enter the local exchange market in the near future. Nonetheless, we will estimate the number of small entities in a subgroup of the category of ''small non-incumbent LECs.'' According to our most recent data, 57 companies identify themselves in the category ''Competitive Access Providers (CAPs) & Competitive LECs (CLECs).'' A CLEC is a provider of local exchange services which does not fall within the definition of ''incumbent LEC'' in section 251(h). Although it seems certain that some of the carriers in this category are CAPs, (While the Commission has not prescribed a definition for the term ''CAP,'' it is generally not used to refer to companies that provide local exchange services.) are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of non-incumbent LECs that would qualify as small business concerns under SBA's definition.

D. Summary Analysis of the Projected Reporting, Recordkeeping, and Other Compliance Requirements

225. Under our current regulations, independent LECs are classified as non-dominant interexchange carriers if they provide interstate, domestic, interexchange services through an affiliate that satisfies the separation requirements established in the Fifth Report and Order. Independent LECs offering interstate, domestic, interexchange services directly (rather than through a separate affiliate), or through an affiliate that does not satisfy the specified conditions, are subject to dominant carrier regulation. Independent LECs are permitted to provide international, interexchange services subject to non-dominant or dominant regulation, as determined on a case-by-case basis. Non-dominant interexchange carriers are not subject to rate regulation, and currently may file tariffs that are presumed lawful on one day's notice and without cost support. Tariff Filing Requirements for Non-Dominant Carriers. As discussed in note 8 *supra,* the Commission recently determined, pursuant to section 10 of the Communications Act, to forbear from requiring non-dominant interexchange carriers to file tariffs for interstate, domestic, interexchange services. The Commission therefore ordered, *inter alia,* non-dominant interexchange carriers to cancel their tariffs for interstate, domestic, interexchange services on file with the Commission within a nine-month transition period and not to file any

such tariffs thereafter. Tariff Forbearance Order at ¶¶ 89–93, stayed pending judicial review, *MCI Telecom. Corp.* v. *FCC,* No. 96–1459 (D.C. Cir. Feb. 13, 1997). See also Policy and Rules Concerning the Interstate, Interexchange Marketplace; Guidance Concerning Implementation as a Result of the Stay Order of the U.S. Court of Appeals for the D.C. Circuit, CC Docket No. 96–61, Public Notice, DA 97–493 (rel. March 6, 1997). Non-dominant carriers are also subject to streamlined section 214 requirements. Compliance with these requirements may require small incumbent LECs to use accounting, economic, technical, legal, and clerical skills.

226. In this Order, we have found that all incumbent independent LECs, including small incumbent independent LECs, must provide in-region, interstate, domestic, interexchange services through a separate affiliate that satisfies the Fifth Report and Order requirements. We are aware of three companies currently providing interexchange services directly on dominant basis, Union Telephone Company (of Wyoming), GTE Hawaiian Tel., and MTC. We direct companies that are not currently providing interexchange services through a separate affiliate that satisfies the Fifth Report and Order requirements to comply with the Fifth Report and Order separation requirements no later than one year from the date of release of this Order. We also extend this regulatory regime, which applies to domestic services, to international, interexchange services as well. Pursuant to this Order, all incumbent independent LECs, including small incumbent independent LECs, must provide in-region, interstate, domestic, interexchange services and international, interexchange services through a separate affiliate that satisfies the Fifth Report and Order separation requirements. Specifically, incumbent independent LECs must provide these services through a separate affiliate that must: (1) Maintain separate books of account; (2) not jointly own transmission or switching facilities with its affiliated exchange companies; and (3) obtain any services from its affiliated exchange companies at tariffed rates and conditions. Fifth Report and Order, 98 FCC 2d at 1198, ¶ 9. For purposes of these requirements, an ''affiliate'' of an independent LEC is ''a carrier that is owned (in whole or in part) or controlled by, or under common control with, an exchange telephone company.'' *Id.* In this Order, we have also eliminated the Fifth Report and Order separation requirements as a condition for non-dominant treatment of incumbent independent LECs' provision of out-of-region, interstate, domestic, interexchange services.

E. Steps Taken to Minimize the Significant Economic Impact of this Report and Order on Small Entities and Small Incumbent LECs, Including the Significant Alternatives Considered and Rejected

227. We believe that our actions eliminating dominant carrier regulation of independent LEC provision of in-region, interstate, domestic, interexchange services, yet maintaining all of the Fifth Report and Order separation requirements to guard against anticompetitive conduct in the form of cost misallocation or unreasonable discrimination, will facilitate the provision of in-region, interstate, domestic, interexchange services by independent LECs, many of which may be small incumbent LECs. We reject proposals to remove the Fifth Report and Order requirements, for reasons set forth in Section IV.B.1.

228. Our actions seem likely to benefit all incumbent independent LECs providing in-region, interstate, domestic, interexchange services on a non-dominant basis, some of which may be small incumbent LECs, because any increase in costs of regulatory compliance can be amortized over a period of one year. As noted in Section IV.B.1, incumbent LECs that currently provide these services on an integrated basis subject to dominant carrier regulation are given one year from the date of release of this Order to comply with the Fifth Report and Order separation requirements.

229. We decline to impose section 272 requirements, aspects of dominant carrier regulation, or any additional requirements on independent LECs' provision of in-region, interstate, domestic, interexchange services. Consistent with our belief that independent LECs are less likely to be able to engage in anticompetitive conduct than the BOCs, we therefore establish a less stringent regulatory regime for the independent LECs. This seems likely to benefit independent LECs, including small incumbent LECs, by not subjecting them to burdensome regulations that may serve only to hamper competition in the interexchange market. For the reasons set forth in Section IV.B.1, we reject alternatives to impose additional requirements on independent LECs' provision of in-region, interstate, domestic, interexchange services.

230. We limit the scope of the separation requirements to incumbent independent LECs. By not imposing the Fifth Report and Order requirements on non incumbent LECs, we avoid imposing unnecessary regulation on new entrants into the local exchange market that wish to provide in-region, interstate, domestic, interexchange services, and will not have control of incumbent local exchange and exchange access facilities. This seems likely to benefit all of these new entrants, some of which may be small entities, by lowering entry costs, lowering the disparity in market power between new entrants and incumbent LECs, minimizing the risk of being subjected to legal action, and decreasing administrative costs. We reject proposals to subject non-incumbent LECs to the same requirements as incumbent LECs, for the reasons set forth in Section IV.B.2.

231. We apply our regulations equally to all incumbent independent LECs, in view of our conclusion that the size of an independent LEC will not affect its incentives to engage in cost misallocation between its monopoly services and its competitive services. Our action is intended to foster competition in the in-region, interstate, domestic, interexchange marketplace nationwide by preventing all incumbent independent LECs, regardless of size, from using their control of bottleneck local exchange and exchange access facilities to thwart new entry. This seems likely to benefit all new entrants into the local exchange market that wish to provide in-region, interstate, domestic, interexchange services, some of which may be small entities, by helping to reduce entry costs and lower the disparity in market power between new entrants and other incumbent LECs. Moreover, our action will likely help to establish these favorable entry conditions uniformly nationwide, fostering increased certainty which will benefit all new entrants, including any small entities. We reject alternatives to exempt all incumbent LECs with less than two percent of the nation's access lines from our regulations, for the reasons stated in Section IV.B.3.

232. We extend the regulatory regime described above, which governs independent LECs' provision of in-region, interstate, domestic, interexchange services, to independent LECs' provision of in-region, international services. We believe that this action will benefit incumbent LECs and non-incumbent LECs, some of which may be small incumbent LECs or small entities, for the same reasons enumerated in our analysis for in-region, interstate, domestic, interexchange services, such as helping

to reduce market entry costs, decreasing the disparity in market power between new entrants and other incumbent LECs, and lowering administrative costs. We decline to treat independent LECs' provision of in-region, interstate, domestic, interexchange services and in-region, international services differently, for the reasons stated in Section IV.B.4.

233. As stated in Section IV.B.5, we intend to commence a proceeding three years from the date of adoption of this Order to determine whether the emergence of competition in the local exchange and exchange access marketplace justifies removal of the Fifth Report and Order requirements. We believe that three years should be a reasonable period of time in which to expect effective competition to develop in local exchange and exchange access markets. We reject proposals to decide in this proceeding whether to sunset separate affiliate requirements for independent LECs, for the reasons stated in Section IV.B.5.

234. *Report to Congress:* The Commission shall send a copy of this FRFA, along with this Report and Order, in a report to Congress pursuant to the SBREFA, 5 U.S.C. § 801(a)(1)(A). A copy of this analysis will also be provided to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**.

VII. Final Paperwork Reduction Analysis

235. Each of the two Notices of Proposed Rulemaking from which this Order issues proposed changes to the Commission's information collection requirements. As required by the Paperwork Reduction Act of 1995, Public Law 104–13, the Commission sought written comment from the public and from the Office of Management and Budget (OMB) on the proposed changes. The collections described therein, however, are addressed in other proceedings.

236. In this Order, we have decided to require independent LECs to comply with Fifth Report and Order separation requirements in order to provide international, interexchange services. Pursuant to the separation requirements, an independent LEC and its international, interexchange affiliate must maintain separate books of account. This requirement constitutes a new ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501–3520. Implementation of this requirement is subject to approval by the Office of Management and Budget as prescribed by the Paperwork Reduction Act.

VIII. Ordering Clauses

237. Accordingly, *it is ordered* that, pursuant to sections 1, 2, 4, 201, 202, 251, 271, 272 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 201, 202, 251, 271, 272, and 303(r), the *Report and Order is adopted.*

238. *It is further Ordered* that the *Report and Order,* which imposes new or modified information or collection requirements, shall become effective 70 days after publication in the **Federal Register**, following approval by the Office of Management and Budget, unless a notice is published in the **Federal Register** stating otherwise.

239. *It is further Ordered* that part 64, subpart T of the Commission's rules, 47 CFR part 64 subpart T, is *added* as set forth in rule changes attached hereto.

240. *It is further Ordered* that the Secretary shall send a copy of this *Report and Order,* including the final regulatory flexibility analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 605(b) of the Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq.*

List of Subjects in 47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 64 of title 47 is amended as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154.

2. Part 64 is amended by adding new subpart T to read as follows:

Subpart T—Separate Affiliate Requirements for Incumbent Independent Local Exchange Carriers That Provide In-Region, Interstate Domestic Interexchange Services or In-Region International Interexchange Services

Sec.

§ 64.1901 Basis and purpose.

(a) *Basis.* These rules are issued pursuant to the Communications Act of 1934, as amended.

(b) *Purpose.* The purpose of these rules is to regulate the provision of in-region, interstate, domestic, interexchange services and in-region international interexchange services by incumbent independent local exchange carriers.

§ 64.1902 Terms and definitions.

Terms used in this part have the following meanings:

Books of Account. Books of account refer to the financial accounting system a company uses to record, in monetary terms the basic transactions of a company. These books of account reflect the company's assets, liabilities, and equity, and the revenues and expenses from operations. Each company has its own separate books of account.

Incumbent Independent Local Exchange Carrier (Incumbent Independent LEC). The term incumbent independent local exchange carrier means, with respect to an area, the independent local exchange carrier that:

(1) On February 8, 1996, provided telephone exchange service in such area; and

(2) (i) On February 8, 1996, was deemed to be a member of the exchange carrier association pursuant to § 69.601(b) of this title; or

(ii) is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in paragraph (2) (i) of this definition. The Commission may also, by rule, treat an independent local exchange carrier as an incumbent independent local exchange carrier pursuant to section 251(h)(2) of the Communications Act of 1934, as amended.

Independent Local Exchange Carrier (Independent LEC). Independent local exchange carriers are local exchange carriers, including GTE, other than the BOCs.

Independent Local Exchange Carrier Affiliate (Independent LEC Affiliate). An independent local exchange carrier affiliate is a carrier that is owned (in whole or in part) or controlled by, or under common ownership (in whole or in part) or control with, an independent local exchange carrier.

In-Region Service. In-region service means telecommunications service originating in an independent local exchange carrier's local service areas or 800 service, private line service, or their equivalents that:

(1) Terminate in the independent LEC's local exchange areas; and

(2) Allow the called party to determine the interexchange carrier, even if the service originates outside the independent LEC's local exchange areas.

Local Exchange Carrier. The term local exchange carrier means any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c), except to the extent that the Commission finds that such service should be included in the definition of that term.

§ 64.1903 Obligations of all incumbent independent local exchange carriers.

(a) Except as provided in paragraph (c) of this section, an incumbent independent LEC providing in-region, interstate, interexchange services or in-region international interexchange services shall provide such services through an affiliate that satisfies the following requirements:

(1) The affiliate shall maintain separate books of account from its affiliated exchange companies. Nothing in this section requires the affiliate to maintain separate books of account that comply with Part 32 of this title;

(2) The affiliate shall not jointly own transmission or switching facilities with its affiliated exchange companies. Nothing in this section prohibits an affiliate from sharing personnel or other resources or assets with an affiliated exchange company; and

(3) The affiliate shall acquire any services from its affiliated exchange companies for which the affiliated exchange companies are required to file a tariff at tariffed rates, terms, and conditions. Nothing in this section shall prohibit the affiliate from acquiring any unbundled network elements or exchange services for the provision of a telecommunications service from its affiliated exchange companies, subject to the same terms and conditions as provided in an agreement approved under section 252 of the Communications Act of 1934, as amended.

(b) The affiliate required in paragraph (a) of this section shall be a separate legal entity from its affiliated exchange companies. The affiliate may be staffed by personnel of its affiliated exchange companies, housed in existing offices of its affiliated exchange companies, and use its affiliated exchange companies' marketing and other services, subject to paragraph (a)(3) of this section.

(c) An incumbent independent LEC that is providing in-region, interstate, domestic interexchange services or in-region international interexchange services prior to April 18, 1997, but is not providing such services through an affiliate that satisfies paragraph (a) of this section as of April 18, 1997, shall comply with the requirements of this section no later than April 18, 1998.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961126334–7025–02; I.D. 062497B]

Fisheries of the Economic Exclusive Zone Off Alaska; ''Other Rockfish'' Species Group in the Eastern Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for the ''other rockfish'' species group in the Eastern Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to fully utilize the total allowable catch (TAC) of ''other rockfish'' in that area.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), July 1, 1997, until 2400 hours, A.l.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The annual TAC for the ''other rockfish'' species group in the Eastern Regulatory Area of the GOA, was established by the Final 1997 Harvest Specifications of Groundfish for the GOA (62 FR 8179, February 24, 1997) as 1,500 metric tons (mt) pursuant to § 679.20(c)(3)(ii). The Final 1997 Harvest Specifications of Groundfish for the GOA also closed directed fishing for ''other rockfish'' in the Eastern Regulatory Area of the GOA (see § 679.20(d)(1)(iii)) in anticipation that the TAC would be needed as incidental catch to support other anticipated groundfish fisheries during 1997. NMFS has determined that as of June 14, 1997, 1,383 mt remain in the directed fishing allowance.

The Administrator, Alaska Region, NMFS, has determined that the 1997 directed fishing allowance of the ''other rockfish'' species group in the Eastern Regulatory Area of the GOA has not been reached. Therefore, NMFS is terminating the previous closure and is opening directed fishing for the ''other rockfish'' species group in the Eastern Regulatory Area of the GOA.

All other closures remain in full force and effect.

Classification

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 27, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–17455 Filed 6–30–97; 11:36 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961126334–7025–02; I.D. 062497C]

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for northern rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to fully utilize the total allowable catch (TAC) of northern rockfish in that area.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), July 1, 1997, until 2400 hours, A.l.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council

under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 679.

The annual TAC for northern rockfish in the Western Regulatory Area of the GOA, was established by the Final 1997 Harvest Specifications of Groundfish for the GOA (62 FR 8179, February 24, 1997) as 840 metric tons (mt) pursuant to § 679.20(c)(3)(ii). The Final 1997 Harvest Specifications of Groundfish for the GOA also closed directed fishing for northern rockfish in the Western Regulatory Area of the GOA (see § 679.20(d)(1)(iii)) in anticipation that the TAC would be needed as incidental catch to support other anticipated groundfish fisheries during 1997. NMFS has determined that as of June 14, 1997, 753 mt remain in the directed fishing allowance.

The Administrator, Alaska Region, NMFS, has determined that the 1997 directed fishing allowance of northern rockfish in the Western Regulatory Area of the GOA has not been reached. Therefore, NMFS is terminating the previous closure and is opening directed fishing for northern rockfish in the Western Regulatory Area of the GOA.

All other closures remain in full force and effect.

Classification

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 27, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–17456 Filed 6–30–97; 11:36 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 128
Thursday, July 3, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV97–930–1PR]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Assessment Rate and Establishment of Late Payment and Interest Charges on Delinquent Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes the establishment of an assessment rate for the 1997–98 and subsequent fiscal periods to cover expenses incurred by the Cherry Industry Administrative Board (Board) under Marketing Order No. 930. This rule also proposes the establishment of an interest rate and late payment charge on delinquent assessments owed by handlers under the tart cherry marketing order. Authorization to assess tart cherry handlers would enable the Board to incur expenses that are reasonable and necessary to administer the program. The interest rate and late payment charges would contribute to the efficient operation of the program by ensuring adequate funds are available to cover budgeted expenses incurred under the marketing order.

DATES: Comments received by August 4, 1997, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, FAX (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, or Kenneth G. Johnson, Regional Manager, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 720–2491, FAX (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; FAX # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, tart cherry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable tart cherries beginning July 1, 1997, and continuing until amended, suspended, or terminated. This proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule invites comments on establishing an assessment rate for the Board for the 1997–98 (July 1, 1997, through June 30, 1998) and subsequent crop years at $0.0025 per pound of tart cherries. This rule also invites comments on establishing interest and late payment charges on past due assessments.

The tart cherry marketing order provides authority to the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program under the order. The members of the Board are producers and handlers of tart cherries. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Board met on January 8 and 9, 1997, and unanimously recommended expenditures of $650,000 for an 18-month period ending June 30, 1998, and an assessment rate of $0.0025 per pound of tart cherries. This was the first public meeting of the newly formed Board. The tart cherry marketing order became effective on September 25, 1996. The Department has approved the Board's 1997–98 budget of expenses. Until assessment income is available, the Board has obtained funds through a lending institution to fund Board operations.

As proposed, the Board would begin to assess handlers on July 1, 1997, and all assessments would be due to the Board office by October 1. Major expenditures recommended by the

Board for the 18-month period ending June 30, 1998, are $25,000 for interest, Board meeting expenses $175,000, salaries $150,000, administration $100,000, and compliance $200,000. The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of tart cherries. Tart cherry shipments for the 1997–98 year are estimated at 260 million pounds which should provide $650,000 in assessment income. Funds in any reserve would be kept within the maximum permitted by the order.

The Board also recommended establishing an interest rate of 12 percent per annum and a late payment charge equal to 10 percent of the unpaid balance of the assessment amount due. The interest rate would be applied to any assessment not paid within 30 days of the October 1 due date. The late payment fee on the unpaid assessment balance by a handler would be assessed 90 days after the October 1 due date.

Under section 930.41 of the order, each person who first handles tart cherries is required to pay a pro-rata share of the cost of administering the program. This cost is in the form of a uniform assessment rate applied to each handler's acquisitions.

Section 930.41 also provides that if a handler does not pay an assessment within the time prescribed by the Board, the assessment may be subject to an interest or late payment charge, or both.

A new section 930.141 is proposed to be established in the rules and regulations that specifies that assessments be subject to an interest charge of 1 percent per month on any unpaid assessment balance beginning 30 days from the due date prescribed by the Board. The Board recommended that all assessments be paid by October 1 of each crop year. Assessments equal to 100 percent of the crop year's assessment obligation would be due on October 1.

Assessments are the main source of funds to pay Board expenses. The failure of handlers to pay assessment obligations promptly results in added expense and operational problems for the Board. Authority was placed in the order to levy interest and late payment charges on delinquent assessments. The interest rate and late payment charges proposed herein are similar to those established under other marketing orders. To attempt to collect delinquent assessments, the Board could incur the added expense of sending out additional invoices and contacting each delinquent handler by phone, in person, or by fax. Nonpayment or late payment of assessments hampers the operation of the Board.

Handlers would have ample time to pay their assessments and avoid incurring the additional charges. Any amount paid by the handler would be credited upon receipt in the Board office.

Interest and late payment charges would provide incentive for handlers to remit assessments in a timely manner, with the intent of creating a fair and equitable process among all industry handlers. It would not impose any costs on handlers who pay their assessments on time, and should contribute to the efficient administration of the program.

The Board discussed alternatives when recommending the interest rate and late payment charge. The Board discussed lower rates, but decided that prompt payment of assessments by handlers is crucial to the operation of this program. Therefore, the Board recommended an interest rate and late payment charge deemed to be sufficient to serve as an incentive to handlers to be prompt with their payment of assessments.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,220 producers of tart cherries in the production area and approximately 40 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of tart cherry producers and handlers may be classified as small entities.

This rule proposes establishing an assessment rate for the 1997–98 and subsequent fiscal periods to cover expenses of the Board at $0.0025 per pound of tart cherries. The Board unanimously recommended expenditures for the 18-month period ending June 30, 1998, of $650,000. Tart cherry shipments for the year are estimated at 260 million pounds which should provide $650,000 in assessment income. Income derived from handler assessments would be adequate to cover budgeted expenses. Funds in any reserve would be kept within the maximum permitted under the order.

The Board discussed alternatives when recommending the interest rate and late payment charge. The Board discussed lower rates, but decided that prompt payment of assessments by handlers is crucial to the operation of this program. Therefore, the Board recommended an interest rate and late payment charge deemed to be sufficient to serve as an incentive to handlers to be prompt with their payment of assessments.

Major expenditures recommended for the 18-month period ending June 30, 1998, include $25,000 for interest, $175,000 for Board meeting expenses, $150,000 for salaries, $100,000 for administration and $200,000 for program compliance. The $200,000 for compliance is deemed necessary in the event volume control regulations are implemented during the 1997–98 season. The Board discussed setting an assessment rate that would allow for sufficient operation of a volume control program for the upcoming season. The Board decided that the assessment rate recommended would sufficiently cover all initial costs of implementing this new order. With regard to alternatives, this is a new marketing order that will begin its first full fiscal year of operations on July 1 of this year. Accordingly, we believe that since the recommended assessment rate would allow funds to be available to cover the initial costs of implementing the new order, including operation of a volume control program for the upcoming season, if implemented, the assessment rate should be proposed as recommended by the Board.

This action would not impose any additional reporting or recordkeeping on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. The new forms for the operation of the order have been approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0177.

The interest and late payment charges were also discussed at a public meeting. The Board believes the interest charge is a reasonable rate. The late payment fee is high enough to discourage late

payments and encourage the timely payment of assessments by handlers.

This rule would provide incentive for handlers to remit assessments in a timely manner, with the intent of creating a fair and equitable process among all industry handlers. It would not impose any costs on handlers who pay their assessments on time, and should contribute to the efficient administration of the program.

Handlers who do not pay their assessments on time would be able to reap the benefits of Board programs at the expense of others. In addition, they would be able to utilize funds for their own use that should otherwise be paid to the Board to finance Board programs. In effect, this would provide handlers with an interest free loan.

Implementing interest and late payment charges would provide an incentive for handlers to pay assessments on time, which would improve compliance with the order. It would minimize actions taken against handlers who fail to pay assessments on time through administrative remedies or the Federal courts. These remedies, currently the only recourse against handlers who fail to pay assessments, can be costly and time consuming. This rule would remove any economic advantage gained by those handlers who do not pay on time, thus helping to ensure a program that is equitable to all. This is also consistent with standard business practices.

While this proposed rule would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule. In addition, the Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Committee meetings, the January 8 and 9, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on these issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this proposed action on small businesses.

The assessment rate, interest rate and late payment charge proposed to be established in this rule would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other available information.

Although the assessment rate, interest rate and late payment charge would be effective for an indefinite period, the Board would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment and interest rates and late payment charge. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department would evaluate Board recommendations and other available information to determine whether modification of the assessment or interest rates or late payment charge is needed. Further rulemaking would be undertaken as necessary. The Board's 1997–98 budget has already been approved by the Department to allow the Board to expend funds that they have borrowed. Budgets for subsequent fiscal periods would be reviewed and, as appropriate, approved by the Department.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 930

Marketing agreements, Tart cherries, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new subpart—Administrative Rules and Regulations and a new section 930.141 are added to read as follows:

Subpart—Administrative Rules and Regulations

§ 930.141 Delinquent assessments.

Pursuant to § 930.41, the Board shall impose an interest charge on any handler whose assessment payment has not been paid within 30 days from the due date of October 1 of each crop year. The interest rate shall be a rate of one percent per month and shall be applied to the unpaid assessment balance for the number of days all or any part of the unpaid balance is delinquent beyond the 30 day payment period. In addition to the interest charge, the Board shall impose a late payment charge on any handler whose payment has not been paid within 90 days from the due date of October 1. The late payment charge shall be 10 percent of the unpaid balance.

3. A new subpart—Assessment Rates and a new § 930.200 are added to read as follows:

Subpart—Assessment Rate

§ 930.200 Assessment rate.

On and after July 1, 1997, an assessment rate of $0.0025 per pound is established for tart cherries grown in the production area.

Dated: June 27, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–17507 Filed 7–2–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1011

[DA–97–09]

Milk in the Tennessee Valley Marketing Area; Proposed Termination of Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; termination.

SUMMARY: This document invites written comments on the proposed termination of the order regulating the handling of milk in the Tennessee Valley marketing area. A proposed amended Tennessee Valley order modifying interim transportation credit provisions failed to receive the required two-thirds approval in a recent polling of cooperatives in the marketing area. Since the Department has determined that the provisions of the proposed amended order are necessary to effectuate the declared policy of the applicable statutory authority, it is necessary to consider terminating the present Tennessee Valley order.

DATES: Comments must be submitted on or before July 10, 1997.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building,

P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 690–1932, e-mail address Nicholas__Memoli@usda.gov.

SUPPLEMENTARY INFORMATION: The Department is issuing this proposed action in conformance with Executive Order 12866.

This proposed termination of a rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the action.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed action will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

During the representative month of February 1997, the milk of 1,469 producers was pooled on the Tennessee Valley order. Of these producers, 1,442 are considered as small businesses.

There were 7 handlers operating 8 pool distributing plants regulated under the Tennessee Valley milk order for February 1997. Of these handlers, 3 are considered small businesses.

If the Tennessee Valley order is terminated, it is likely that all but 2 of the handlers currently regulated under the order will become regulated under the Carolina, Southeast, or Louisville-Lexington-Evansville Federal milk orders. The regulations under these other orders are, for the most part, comparable to those of the Tennessee Valley order, but each of these 4 orders has a different price structure and a unique uniform price to producers that is computed each month. The impact of these regulatory changes on producers will depend upon which order the former Tennessee Valley handlers become regulated under. In some cases, the uniform price paid to producers will be somewhat higher, but in other cases it will be a little lower.

Those handlers who will become regulated under other Federal orders will continue to be responsible for the recordkeeping, reporting, and compliance requirements.

Interested parties are invited to submit comments on the probable regulatory and informational impact of this proposed action on small entities. Also, parties may suggest modifications of this proposal for the purpose of tailoring their applicability to small businesses.

Proposed Termination of Rule

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act, the termination of the order regulating the handling of milk in the Tennessee Valley marketing area is being considered.

All persons who want to send written data, views, or arguments about the proposed termination should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after the publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures before the requested termination is to be effective.

The comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Preliminary Statement

Interested parties are invited to submit comments on all issues concerning the proposed termination of the Tennessee Valley milk order. In addition to commenting on the merits of terminating the order, interested parties should specifically address the handling of the disbursement of the current Tennessee Valley Transportation Credit Balancing Fund (TCBF).

If the Tennessee Valley order is terminated, it is likely that all but 2 of the handlers currently regulated under the order will become fully regulated handlers under the Carolina, Southeast, or Louisville-Lexington-Evansville milk orders. Since these orders, like the Tennessee Valley order, have provisions to reimburse handlers for the expense of transporting supplemental milk to the market (i.e., transportation credit provisions) and, consequently, maintain a transportation credit balancing fund (TCBF) for this purpose, a question arises concerning the disbursement of the balance in the Tennessee Valley TCBF.

All of the Tennessee Valley handlers who will become regulated under Orders 5, 7, or 46, will be eligible for transportation credits under the provisions of those orders. In view of this, it would be unfair to return the money that Tennessee Valley handlers have contributed to the Order 11 TCBF and then permit these handlers to draw credits out of the TCBF in Orders 5, 7, or 46 without ever having contributed to such funds. For this reason, the Department recommends that the funds accumulated in the Tennessee Valley TCBF be transferred prorata (based on each handler's contribution to the Order 11 TCBF) to each of the TCBFs of the respective orders where such handlers become regulated. This transfer of funds, the Department believes, is the most ''equitable'' means for disbursement of the TCBF in accordance with 7 CFR Part 1000, General Provisions of Federal Milk Marketing Orders. In the case of 2 Order 11 handlers who will likely not be regulated under any of the other 3

orders, the Department recommends returning these handlers' pro rata share of the TCBF to these handlers. The terms of 7 CFR 1000.4(d)(2) direct the market administrator or the ''liquidating agent'' to distribute outstanding funds connected with a terminated order to handlers ''in an equitable manner.'' The Department invites interested parties to comment on this proposal and/or to suggest any alternative way to dispose of these funds in an equitable manner.

At least one additional question arises with the possible termination of the Tennessee Valley order. The transportation credit provisions for Orders 5, 7, 11, and 46 were adopted simultaneously for these 4 orders. Because of the overlap in supply areas for these markets, producers in any of the marketing areas of the 4 orders are ineligible for transportation credits under any of the other 3 orders. With the possible termination of Order 11, a question may arise concerning the interpretation of Section 82(c)(2)(ii) in the interim amendments or Section 82(c)(2)(iii) in the final decision amendments as set forth in the **Federal Register** of May 20, 1997, at 62 FR 27525. In either case, the language of those paragraphs in Orders 5, 7, and 46 states that ''the farm on which the milk was produced is not located within the specified marketing areas of this order or the marketing areas of'' the other 3 orders involved in this proceeding. Thus, Orders 5, 7, and 46 refer to ''the Order 11 marketing area.''

If Order 11 is terminated, the question that arises is whether a producer located in the former Tennessee Valley marketing area is still ineligible for a transportation credit under Orders 5, 7, and 46. The Department maintains that the reference to the Order 11 marketing area was merely a convenient geographic reference used in lieu of repeating a lengthy list of counties and cities. Accordingly, the language referring to the marketing area of Federal Order 11 will continue to be interpreted as the territory defined in the Tennessee Valley order.

Interested parties are invited to submit comments on this proposed interpretation of the order as well as the other issues raised in this notice.

Statement of Consideration

The proposed action would terminate the order regulating the handling of milk in the Tennessee Valley marketing area. On May 12, 1997, the Department issued a partial final decision on proposed amendments to the Carolina, Southeast, Tennessee Valley, and Louisville-Lexington-Evansville milk orders which was published on May 20, 1997 (62 FR 27525). The final decision document contained proposed amended orders for the 4 southeast marketing areas, including the Tennessee Valley order, and directed the respective market administrators of the 4 orders to ascertain whether producers approved the issuance of the amended orders. The final decision concluded that amended orders were needed to effectuate the declared policy of the applicable statutory authority.

Less than two-thirds of the producers whose milk is pooled in the Tennessee Valley approved the issuance of the proposed amended order. In these circumstances, where it has been concluded that the order should be amended to effectuate the declared policy of the Act, and the Act requires two-thirds of the producers to vote affirmatively, it appears that continuation of the existing Tennessee Valley order would not be in conformity with the applicable statutory authority. Therefore, it is necessary to consider terminating the present order.

List of Subjects in 7 CFR Part 1011

Milk marketing orders.

The authority citation for 7 CFR Part 1011 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Dated: June 30, 1997.

Lon Hatamiya,

Administrator, Agricultural Marketing Service.

[FR Doc. 97–17609 Filed 7–2–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–94–403]

RIN 1904–AA67

Energy Conservation Program for Consumer Products: Notice of Public Workshop on Clothes Washers Energy Efficiency Standards Rulemaking

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of Public Workshop.

SUMMARY: The Department of Energy (the Department or DOE) today gives notice that it will convene a public workshop to discuss the proposed analytical framework and tools for evaluating possible revisions to the clothes washer energy efficiency standards.

DATES: The public workshop will be held on Wednesday, July 23, 1997, from 9:00 a.m. to 4:00 p.m.

ADDRESSES: The workshop will be held at the U.S. Department of Energy, Room 1E–245, 1000 Independence Avenue, SW, Washington, DC 20585.

Copies of the transcript of the public workshop, public comments received, and this notice may be read at the Department of Energy, Freedom of Information Reading Room, U.S. DOE, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–6020, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Qonnie Laughlin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9632.

Ms. Sandy Beall, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, Mail Station EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–7574.

SUPPLEMENTARY INFORMATION: In continuing the work on possible revisions to energy efficiency standards on clothes washers, the Department is convening a workshop to present and receive public comments on the proposed analytical approach for evaluating the clothes washer standards. At this workshop the following will be discussed:

Preliminary Clothes Washers Rulemaking Schedule.

Review of the Rulemaking Framework: The Department will seek comment on the draft analytical framework for the clothes washers rulemaking.

Identification of Analytical Methods and Tools: The Department seeks input into the selection of engineering and economic analytical tools to be used during the rulemaking.

Engineering Analysis/Data Collection: The Department plans to collect data using the energy efficiency approach to derive a cost efficiency curve within a range for the engineering analysis. The Department will review the key issues surrounding data collection and the reporting of manufacturing costs for incorporation into the engineering analysis.

Price: The Department will lead a discussion on possible approaches to generating retail prices to be used in the consumer life-cycle-cost analysis.

Life-Cycle-Cost: The Department plans to demonstrate a new life-cycle-cost spreadsheet model which can account for variability of key criteria, such as utility rates and water heater fuel type.

Shipment Forecasts: The Department will present a base-line shipment forecast for stakeholder review. This forecast will incorporate expected improvement in efficiencies as a result of market forces or voluntary programs and how the distribution of efficiency impacts different consumers.

Energy Savings Forecasts: The Department will present an example of energy savings forecasting results using a simple spreadsheet to show how the growth in efficiency can be accounted for over time.

Identification of Experts and Other Interested Parties for Peer Review: The Department wishes to identify a group of independent experts and other interested parties who can provide expert review of the results of the engineering and economic analyses.

Background on the approach to be followed in evaluating clothes washer standards is found in Appendix A of Subpart C of 10 CFR Part 430, see 61 FR 36973 (July 15, 1996), which outlines the planning and prioritization process, data collection and analysis, and decision making criteria. Information pertaining to this rulemaking include the following: An Advance Notice of Proposed Rulemaking to Amend the Energy Conservation Standards for Three Cleaning Products, published on November 14, 1994 (59 FR 56423), and comments thereon; Draft Report on the Preliminary Engineering Analysis for Clothes Washers; Draft Report on Design Options for Clothes Washers; and the transcript from the November 15, 1996, Workshop and comments relating to the workshop. Copies of these may be read at the DOE Freedom of Information Reading Room.

The Department also welcomes written comments or recommendations on the process and the tools to be used for the clothes washers rulemaking. Written comments or recommendations should be submitted to Sandy Beall at the address listed in the **FOR FURTHER INFORMATION CONTACT** section.

Please notify Sandy Beall or Qonnie Laughlin at the address listed in the **FOR FURTHER INFORMATION CONTACT** section if you intend to attend the workshop, if you wish to receive material prepared for the workshop (including the draft analytical framework), or if you wish to be added to the DOE mailing list for receipt of future notices and information concerning clothes washers matters relating to energy efficiency.

Issued in Washington, DC, on June 27, 1997.

Brian T. Castelli,

Chief of Staff, Energy Efficiency and Renewable Energy.

[FR Doc. 97–17483 Filed 7–2–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 451

Renewable Energy Production Incentives

AGENCY: Office of Energy Efficiency and Renewable Energy, DOE

ACTION: Interpretations and request for comments.

SUMMARY: The Office of Energy Efficiency and Renewable Energy in the Department of Energy today is publishing ''Questions and Answers Regarding Renewable Energy Production Incentives,'' to provide clarification to owners or operators of renewable energy facilities who would like to apply for renewable production incentive payments. The intent of these Questions and Answers is to assist applicants and potential applicants in their understanding of requirements that must be met to receive incentive payments under the program and of program procedures.

DATES: Public comment is invited on a continuing basis.

ADDRESSES: Questions and comments may be sent to James Spaeth, U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401.

FOR FURTHER INFORMATION CONTACT: James Spaeth, U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401, (303) 275–4706.

SUPPLEMENTARY INFORMATION:

Background

Section 1212 of the Energy Policy Act of 1992, 42 U.S.C. 13317, requires the Department of Energy (DOE), subject to the availability of appropriations, to make incentive payments to the owners or operators of qualified renewable energy facilities for the production and sale of electric energy from certain renewable energy sources. DOE promulgated implementing regulations on July 19, 1995 (60 FR 36959), which subsequently were codified in 10 CFR Part 451. Although the renewable energy production incentive (REPI) program generally has operated smoothly, DOE staff is frequently asked questions by the public about eligibility for production incentives and administrative details of the program. DOE staff has prepared this set of Questions and Answers to address topics that are frequently the subject of questions, and to provide informal guidance on program administration to prospective applicants for renewable energy production incentives. DOE will revise the Questions and Answers from time to time if further experience under the program or public comments show the need for such revision.

Format of the Questions and Answers

Questions and answers are grouped by the provision of the REPI regulations that they explicate and are presented in the same order as the regulatory provisions.

The text of the Questions and Answers follows:

Questions and Answers Regarding Renewable Energy Production Incentives

Questions About 10 CFR 451.2 Definitions

Q1. Who is the ''DOE Deciding Official'' responsible for acting on applications for REPI payments?

A1. Section 451.2 defines ''Deciding Official'' to mean ''the Assistant Secretary for Energy Efficiency and Renewable Energy (or any DOE official to whom the authority of the Assistant Secretary may be redelegated by the Secretary of Energy).'' On July 26, 1996, the Secretary of Energy delegated the authority of the Deciding Official to the Manager, Golden Field Office, Golden, Colorado (Delegation Order No. 0204–159). This delegation places full responsibility for administering the REPI Program with the Golden Field Office. However, this delegation does not affect the non-delegable responsibility of the Assistant Secretary for Energy Efficiency and Renewable Energy, under Section 451.9(e), to determine the extent to which appropriated funds are available for obligation under this program for each fiscal year.

Q2. What constitutes a ''renewable energy facility'' for purposes of establishing eligibility for REPI payments?

A2. Any owner of a qualified renewable energy facility, or any operator of such facility with the owner's written consent, may apply for REPI payments for net electric energy generated for sale from a renewable energy source. Section 451.2 defines ''renewable energy facility'' to mean a

single module or unit, or an aggregation of such units, that generates electric energy which is independently metered and which results from the utilization of a renewable energy source. In the notice of proposed rulemaking for Part 451, DOE proposed defining ''renewable energy facility'' to mean the systems or components of facilities generating electricity from renewable energy sources (59 FR 24982 (May 13,1994)). In the preamble for that notice, DOE stated that it interpreted the term to include mostly equipment, and not the land on which the facility is located or, in the case of geothermal facilities, the geothermal field. In response to public comment, DOE modified the definition to clarify that a single module or unit of a larger facility (*e.g.*, a wind turbine and its tower and supporting pad) could constitute a ''renewable energy facility'' under the REPI program. Although the list of systems or components for various types of renewable energy facilities was omitted in the final definition, DOE did not intend by that change to alter its view that ''renewable energy facility'' includes mostly equipment that is used to produce electric energy from a renewable energy source. The following guidance is consistent with these previous interpretations:

- DOE does not consider the land on which the facility is located to be part of the renewable energy facility.
- For geothermal facilities, DOE does not consider the wells and associated equipment normally required to extract heat energy from the earth to be part of the facility.
- For facilities based on closed loop biomass, agricultural waste, or animal waste, DOE does not consider the biomass farm or forest and associated growing biomass or animals to be part of the facility.
- For landfill gas facilities, DOE does not consider the landfill and the gas collection and distribution system to be part of the facility.

Q3. Could a renewable energy capacity addition to an existing qualified facility ever constitute a separate qualified ''renewable energy facility''?

A3. Yes. The definition of ''renewable energy facility'' in Section 451.2 does not explicitly address whether a capacity addition made to a qualified renewable energy facility that is already generating electricity for sale is eligible for annual REPI payments. The Department will permit an owner or operator of a qualified renewable energy facility to submit a separate annual application for a renewable energy capacity addition if it meets all of the criteria in the definition of ''renewable energy facility,'' i.e., it consists of a module or unit, or aggregation of such units, that generates electricity which is independently metered and sold, and which results from the utilization of a renewable energy source. Each year's renewable energy capacity addition to an existing facility for which the owner or operator elects to submit a separate application will be allowed a 10-year eligibility period for REPI payment. The first year of energy qualification for such payment will begin with the fiscal year in which the new capacity addition first begins to generate electricity for sale.

Question About 10 CFR 451.4 What is a Qualified Renewable Energy Facility?

Q1. How does DOE interpret the statutory phrase ''for sale in, or affecting, interstate commerce'' in determining whether electricity generated and sold by a renewable energy facility qualifies for REPI payments?

A1. Section 1212 of the Energy Policy Act requires a qualified renewable energy facility to generate electric energy for sale in, or affecting, interstate commerce (42 U.S.C. 13317(b)). DOE has interpreted the statutory phrase to mean that ''the net electric energy generated by the renewable energy facility must be sold to another entity for consideration.'' DOE interprets Section 451.4c to allow a transaction between related parties to satisfy this requirement.

Question About 10 CFR 451.5 Where and When to Apply

Q1. Would a public utility organization planning to construct or acquire a renewable electric generation facility obtain any benefits from submitting a pre-application to DOE as provided in its rules?

A1. Section 451.5(a)(1) creates a voluntary pre-application process which organizations contemplating the construction or acquisition of a renewable electric generation facility may use to obtain from DOE a written preliminary and conditional determination on: (1) whether the contemplated project would be eligible to receive a REPI payment and (2) whether the project would qualify as a facility using technologies as defined in Section 451.9(e)(1), that is solar, wind, geothermal, or closed-loop biomass technologies, or as a facility using technologies defined in Section 451.9(e)(2), i.e., all other qualified renewable energy technologies. The technology distinction is used for purposes of priority in receiving incentive payments if funds are not available to make full payments for all approved applications in any year. This preliminary determination can reduce uncertainty regarding project qualification and, if available in the early stages of decision making, will allow an organization to make more informed decisions. Although few pre-applications have been received to date, the Department believes the pre-application process can benefit an organization considering the construction or acquisition of a renewable electric generation facility. A pre-application may be submitted at any time and must contain the information described in Section 451.8 (a) through (e). DOE will request an organization submitting a pre-application to include an estimate of the facility's expected annual electricity generation in kilowatt-hours (kWh). The estimate will be used by DOE to forecast the REPI funds that would be needed if the project were implemented.

Q2. Should a public utility organization which has decided to construct a renewable electric generation facility voluntarily notify DOE of its decision?

A2. Section 451.5(a)(2) establishes a voluntary notification process to assist DOE in developing its annual REPI program budget requests. A notification is a one-time notice to the Department that a prospective owner or operator has decided to construct a facility. The notification alerts the Department that a new facility is expected to begin to produce energy at a future date and that the output energy is likely to qualify for REPI payments. The notification should include the information described in Section 451.8(a) through (e) and an estimate of the facility's expected annual electric generation in kilowatt-hours (kWh). Although few REPI program participants have provided voluntary notification, the Department encourages its use because the notification, together with the pre-application, will provide the Department a sounder basis for projecting funding requirements and seeking annual appropriations for the program.

Question About 10 CFR 451.6 Duration of Incentive Payments

Q1. What constitutes the 10-year REPI payment period specified in the Energy Policy Act?

A1. Consistent with section 1212 of the Energy Policy Act, Section 451.6 states that DOE shall make incentive payments for 10 fiscal years, subject to the availability of appropriated funds. A REPI payment is made for the net generation and sale of electricity from a

qualified renewable energy facility that occurred in the previous fiscal year. The first year in which electricity is generated for sale from this facility and the 9 subsequent fiscal years constitute the 10 fiscal years of net electric generation and sale that are eligible for a REPI payment. Another provision of the Department's regulations, Section 451.5(b)(3), provides that failure to file an application within the first quarter (October 1 through December 31) of any fiscal year for payment of net energy generated and sold in the prior fiscal year will result in the loss of eligibility for a REPI payment for energy generated and sold in that prior fiscal year.

Questions About 10 CFR 451.8 Application Content Requirements

Q1. Will DOE require an applicant for REPI payments to describe the specific components of the renewable energy facility for which it requests payment?

A1. Yes. An applicant is required to explain how it satisfies the requirements of a qualified renewable energy facility, and a ''renewable energy facility'' is defined to mean a single module or unit, or an aggregation of such units, that generate electricity which is independently metered and which results from the utilization of a renewable energy source. The Department will require applicants to include, as part of the application statement, a brief description of the key renewable energy system components (including component manufacturer) used to convert the renewable resource to electricity.

Q2. What steps must an applicant take to prepare a statement of the annual and monthly metered net electric energy generated and sold during the prior fiscal year by the qualified renewable energy facility?

A2. Section 451.8(f) requires that applications contain a statement of the annual and monthly metered net electric energy generated and sold during the prior fiscal year by the qualified renewable energy facility for which an incentive payment is requested. To reduce the need for supplemental submissions, and the resulting delay in payments, DOE will expect applicants to follow these procedures for obtaining monthly and annual meter readings:

(1) Meter readings should be taken on the last calendar day of each month, if feasible.

(2) When it is not feasible to take readings on the last calendar day of the month, DOE will permit the use of other intervals of approximately 30 days, provided the applicant includes the date of each meter reading and the net electric energy generated and sold during the period between meter readings.

(3) If a meter reading is not obtained on the first and last days of a fiscal year for which incentive payments are requested, the applicant must document the method it used to calculate the electric energy claimed for payment in the first and last months of that fiscal year.

Q3. Can DOE make REPI payments by issuing a check to the applicant?

A3. No. Although Section 451.8(j) includes payment by check as a preferred payment method, that payment option is no longer available to DOE. Public Law 104–134 requires that virtually all Federal payments be made via electronic funds transfer beginning on July 26, 1996. Applicants should include transfer instructions with REPI applications or complete OMB Form SF–3881, Automated Clearance House (ACH) Vendor/Miscellaneous Payment Enrollment, available from the Department of Energy Golden Field Office.

Question About 10 CFR 451.9 Procedures for Processing Applications

Q1. How will DOE handle applications for REPI payments if available appropriated funds are insufficient to make full payments for all approved applications for a specific year?

A1. Section 451.9(e) contains the procedures that DOE will implement if available appropriated funds are insufficient to make full payments for all approved applications for a specific year. Insufficient funds may result in some qualified applicants receiving either no incentive payment or a partial incentive payment on a pro rata basis. If a qualified applicant receives no incentive payment due to insufficient funds, then all of the net electricity produced for sale in kilowatt-hours would be considered accrued energy. If a qualified applicant receives a partial incentive payment on a pro rata basis, an associated portion of the net electricity produced for sale in kilowatt-hours would be considered to have received a full incentive payment and the remainder of the net electricity produced for sale in kilowatt-hours would be considered to be accrued energy. For example, if a qualified applicant's net electric production for sale for the year was 1,000,000 kilowatt hours and due to insufficient funds only 80 percent of the incentive payment could be paid on a pro rata basis, then 800,000 kilowatt-hours would receive a full incentive payment and 200,000 kilowatt-hours would be considered to be accrued energy. If an applicant seeks an incentive payment for accrued energy in a subsequent year, the applicant needs to specifically request payment for this amount of accrued energy in the subsequent year's application. If an applicant fails to specifically request payment for this amount of accrued energy in a subsequent year's application, the accrued energy will not be considered for payment that year. Accrued energy (quantified in kilowatt-hours) that is submitted in a subsequent year's application will be added to and treated in the same manner as the subsequent year's net electricity that is being submitted by the applicant for an incentive payment. Using the same example, if 1,000,000 kilowatt-hours of net electricity was also produced for sale in the next year by the applicant and the applicant's application also contained a request for an incentive payment for the 200,000 kilowatt-hours of accrued energy from the previous year, then a total of 1,200,000 kilowatt-hours of electricity would be considered for incentive payment for the applicant in the next year. Section 1212 of the Energy Policy Act of 1992 (42 U.S.C. 13317(d)) states that a qualified renewable energy facility may receive payments for a 10-fiscal year period. This means that no REPI payments can be made for either net electric production or accrued energy after the annual REPI payment is made that applies to the tenth fiscal year of production for a qualified facility.

Issued in Washington, DC, on June 25, 1997.

Joseph J. Romm,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 97–17347 Filed 7–2–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 401, 411, 413, 415 and 417

[Docket No. 28851; Notice 97–2A]

RIN 2120–AF99

Commercial Space Transportation Licensing Regulations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: A proposed rule was published on March 19, 1997 (53 FR

13216) with a 60-day comment period. This document announces that the comment period for the proposal to amend the licensing regulations for launching commercial launch vehicles is reopened. That comment period closed on May 19, 1997. In response to industry requests that more time be provided for comment development, the comment period is reopened.

DATES: The comment period is reopened from July 3, 1997 through August 4, 1997.

ADDRESSES: An original plus four copies of comments on this NPRM should be mailed to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), 800 Independence Avenue, SW, Washington, DC 20591. Comments may also be sent electronically to the Rules Docket by using the following Internet address: 9-nprm-cmts@faa.dot.gov. All comments must be market Docket 28851. Comments may be examined Monday through Friday, except Federal holidays, between the hours of 8:30 a.m. and 5:00 p.m. in Room 915F.

FOR FURTHER INFORMATION CONTACT: J. Randall Repcheck, Commercial Space Transportation, AST–200, (202) 366–2258 or Laura Montgomery, Office of the Chief Counsel, AGC–200, (202) 267–8018.

SUPPLEMENTARY INFORMATION: Notice No. 97–2 was published on March 19, 1997 [53 FR 13216]. This Notice, as published, provided a 60-day comment period which closed May 19, 1997.

Background

The Office of the Associate Administrator for Commercial Space Transportation carries out the Secretary's responsibility (Commercial Space Launch Act of 1984, as amended, codified at 49 U.S.C. Subtitle IX, ch. 701, Commercial Space Launch Activities) for licensing launches, and encouraging, facilitating and promoting commercial space launches by the private sector, 49 U.S.C. § 70103.

After six years of experience in regulating the commercial space industry, the Office initiated a process for standardizing its licensing regulations. Over the course of time, and with the input of licensees and Federal launch ranges, the Office has evolved a standardized approach to licensing launches from Federal launch ranges. Accordingly, the Office now proposes to implement that approach through revisions to its regulations. Notice 97–2 proposes to amend licensing regulations for launching commercial launch vehicles. The proposed regulations are intended to provide applicants and licensees greater specificity and clarity regarding the scope of a license, and regarding licensing requirements and criteria.

Reopen Comment Period

On May 19, 1997, McDonnell Douglas Aerospace, Lockheed Martin, and other major U.S. commercial space launch industry participants requested that the comment period be extended beyond May 19, 1997 to allow interested parties to submit additional comments and/or clarifications to complex issues in the Notice. Industry states that in light of the detail needed to respond accurately, an extension is needed.

The comment period closed on May 19, 1997, which prevented an extension. To allow industry additional time for a more thorough review of applicable issues and drafting of responsive comments, the FAA finds that it is in the public interest to reopen the comment period for an additional 30 days. Accordingly, the FAA is reopening the comment period July 3, 1997 through August 4, 1997.

Issued in Washington, DC, on June 27, 1997.

Patti Grace Smith,

Acting Associate Administrator for Commercial Space Transportation.

[FR Doc. 97–17451 Filed 7–2–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

14 CFR Part 440

[Docket No. 28635; Notice 96–8B]

RIN 2120–AF98

Financial Responsibility Requirements for Licensed Launch Activities

AGENCY: Federal Aviation Administration (FAA), Associate Administrator for Commercial Space Transportation, DOT.

ACTION: Notice of reopened comment period.

SUMMARY: The FAA is soliciting additional comments on notice no. 96–8 (61 FR 38992; July 25, 1996), which proposed financial responsibility and allocation of risk requirements for launch activities carried out under an FAA license. An additional 30-day comment period on the notice of proposed rulemaking is provided for this purpose.

DATES: Comments must be received by August 4, 1997.

ADDRESSES: Comments should be mailed in triplicate to the Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28635, Room 915G, 800 Independence Avenue, SW., Washington, DC 20591. Comments must reference Docket No. 28635. Comments may also be submitted electronically to the Rules Docket by using the following Internet address: 9-nprm-cmts@faa.dot.gov.

Commenters wishing to receive acknowledgement of receipt of their comments must include a pre-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 28635.'' The postcard will be date-stamped and mailed to the commenter. Copies of materials relevant to this rulemaking, including copies of all public comments, are kept by the Rules Docket Technician, Room 915G, at the above address. The docket may be examined Monday through Friday, except Federal holidays, between the hours of 8:30 a.m. and 5:00 p.m.

An electronic copy of the notice of proposed rulemaking (NPRM) may be downloaded from the FAA regulations section of the Fedworld electronic bulletin board service (703) 321–3339, the Federal Register's electronic bulletin board service (202) 512–1661 or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (202) 267–5948. A modem and suitable communications software is required.

Internet users may reach the FAA's web page at http://www/faa/gov or the Federal Register's web page at http://www.access.gpo.gov/su__docs for access to recently published rulemaking documents.

Any person may obtain a paper copy of the NPRM by submitting a request to the FAA, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–9680. Communications must identify the notice and docket number.

Persons interested in being placed on the mailing list for future Notices of Proposed Rulemaking should request from the FAA Office of Rulemaking a copy of Advisory Circular No. 11–2A, notice of proposed rulemaking distribution system, that describes the application procedure.

FOR FURTHER INFORMATION CONTACT: Ms. Esta M. Rosenberg, Attorney-Advisor, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, Department of Transportation, Washington, DC (202) 366–9305.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 1996, the FAA's Associate Administrator for Commercial Space Transportation (AST) published an NPRM entitled, ''Financial Responsibility Requirements for Licensed Launch Activities''. A 60-day comment period was provided for the public to submit comments and information. The comment period closed on September 23, 1996. In addition, during the open comment period, a technical corrections notice was published August 26, 1996 (61 FR 43814). The NPRM solicited comments on AST's approach to implementing and assuring compliance with financial responsibility requirements for licensed launch activities. Comments were also requested on the proper allocation of certain risks associated with those activities. Requirements for financial responsibility and allocation of risk are part of a comprehensive scheme mandated by 49 U.S.C. Subtitle IX, ch. 701 (formerly, the Commercial Space Launch Act of 1984, as amended (CSLA)), to protect launch participants from potentially unlimited liability or catastrophic losses.

In response to industry requests that more time be provided for comment development, the comment period was reopened October 2, 1996, for an additional 60-day comment period (61 FR 51395). The second comment period closed on December 2, 1996.

Following review and consideration of comments received, AST intended to codify financial responsibility requirements in a final rule. However, shortly after the close of the comment period, a launch vehicle failure at Cape Canaveral Air Station resulted in some property damage to the facility. Although the launch was not FAA-licensed and therefore not subject to CSLA requirements for financial responsibility and allocation of risk, the resultant damage has led to greater scrutiny—by both the Government and the U.S. commercial launch industry—on the scope of required insurance coverage and related issues.

Following this event, the FAA provided additional clarification to launch licensees of the agency's existing requirements for liability insurance coverage. Licensees were notified, in writing, of the agency's longstanding requirements that claims of Federal Government employees and employees of Federal Government contractors and subcontractors (referred to collectively in this Notice as Government personnel) for injury, damage or loss must be covered by third-party liability insurance. Based upon their reactions, it has become apparent to the agency that the commercial launch industry was not aware of AST's interpretation. In this respect, licensees incorrectly believed that the NPRM proposed a change to existing practice that would not be implemented until issuance of a final rule. To avoid self-insuring this risk, licensees have procured additional liability coverage that would respond to claims of Government personnel.

At the May 14, 1997, meeting of the Commercial Space Transportation Advisory Committee (COMSTAC), the Risk Management Working Group reported industry concerns that fundamental changes in policy were being implemented by AST in advance of a final rule. The Working Group Chairman reported that ''the potential effects of these changes on risk management issues are serious. Industry members do not believe that they had a sufficient understanding of the FAA's position to be able adequately to express their concerns in the first round of comments and wish to ensure that the FAA fully understands industry's position before a final rule is issued.'' The COMSTAC adopted a resolution recommending that the agency issue a supplemental notice of proposed rulemaking and allow an additional opportunity for public comment.

The agency has determined that it is not necessary to issue a supplemental notice of proposed rulemaking to allow another opportunity for industry comment. However, it does find appropriate the reopening of the comment period on Notice No. 96–8 for 30 days to allow for submission of additional public comments.

Request for Comments

The agency requests further comments on all aspects of the NPRM proposed in notice 96–8, ''Financial Responsibility Requirements for Licensed Launch Activities.'' Persons who filed comments previously may supplement their earlier views or submit replacement comments that will be added to the docket.

Commenters are requested to be specific and precise in stating their objections and concerns with respect to particular provisions in the NPRM.

The agency would like commenters to address the appropriate means of implementing statutory requirements for allocation of risks among launch participants. The NPRM reflects the statutory requirement for reciprocal waivers of claims among launch participants. As part of the waiver agreement, private party launch participants agree to assume responsibility for their employee's losses as required by 49 U.S.C. 70112(b). This requirement is explain at 61 FR 39012. The agency requests comments on the intended meaning and proper implementation of this requirement, and its relationship to third-party liability insurance requirements.

The agency requests comments on the appropriate scope of required third party liability insurance. In the NPRM, AST proposes to define a ''third party'' as ''(a)ny person other than: (A) (t)he United States, its agencies, and its contractors and subcontractors involved in launch services for licensed launch activities; (B) (t)he licensee and its contractors and subcontractors involved in launch services for licensed launch activities; and (C) (t)he customer and its contractors and subcontractors involved in launch services for licensed launch activities.'' In addition, ''Government personnel, as defined in this section (§ 440.3(a)(6)) are third parties. For purposes of these regulations, employees of other launch participants identified in paragraphs (a)(15)(i)(B) and (C) of this section (§ 440.3) are not third parties.''

AST's proposed definition is explained at 61 FR 39003 and reflects current agency practice. This definition has broad implications for liability insurance requirements, implementation of statutory-based reciprocal waivers of claims and the agreement to be responsible for employee losses, as well as provisions for Government payment of excess claims.

The agency would like commenters to address the following questions. Are employees of the Federal Government and its contractors and subcontractors (Government personnel) properly classified as third parties? If not, how should their claims against other launch participants for damage, injury, or loss be addressed, particularly in light of the limits on the Government's ability under appropriations laws to accede to unfunded contingent liability? From an insurance perspective, what issues or problems does the proposed definition present in providing liability insurance coverage for third-party claims? Should employees of all private party launch participants also be deemed third parties? If so, how would this affect CSLA-required liability coverage? If these employees are not third parties, how should their claims be managed? That is, how should the various launch participants protect themselves financially from claims by other launch participants' employees?

Specific Comments on Costs and Benefits

The results of the FAA's analysis of the economic effects of this rulemaking were summarized in the NPRM at 61 FR 39015. The NPRM states that over a four-year period there is a reallocation of expected costs of claims of $20,000 from the U.S. commercial space launch industry (benefits) to the United States (costs). This reallocation is a consequence of the Federal Government's payment under the statute of third-party claims in excess of required insurance, up to $1.5 billion exposure for liability.

Because this proposed rule would have long-lasting consequences on commercial launch activities, the agency is reiterating its need for specific comments on costs and benefits, with sufficient detail to determine the economic burdens associated with this proposed rulemaking. Commenters are encouraged to provide information on additional costs that would be imposed on the commercial launch industry, including launch services providers, their customers, and the contractors and subcontractors of both, as a result of the NPRM. This additional economic information would help the agency to quantify costs and benefits associated with this rulemaking and to weight alternatives. For example, the additional cost of obtaining liability insurance coverage for claims of Government personnel should be readily ascertainable and may be offered in support of a commenter's view on the appropriate allocation of that risk.

Views are also requested on alternative means of achieving the same level of compliance (i.e., benefits), but at a lower cost. To be useful to the agency, any usable cost or benefits information must identify (1) all relevant assumptions, and (2) sources of information whenever possible.

Additional Comment Period

Because the comment period on notice 96–8 has closed, it cannot be extended, but must be reopened. To allow industry additional time for a more thorough review of applicable issues and drafting of responsive comments, the FAA finds that it is in the public interest to reopen the comment period. Accordingly, the comment period is reopened through August 4, 1997. Late-filed comments will be considered to the extent practicable; however, no further extensions of the comment period are contemplated.

Issued in Washington, DC, on June 20, 1997.

Patricia G. Smith,

Acting Associate Administrator for Commercial Space Transportation, Federal Aviation Administration.

[FR Doc. 97–17452 Filed 7–2–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC09

Establishing Oil Value for Royalty Due on Federal Leases, and on Sale of Federal Royalty Oil

AGENCY: Minerals Management Service, Interior.

ACTION: Supplementary proposed rule.

SUMMARY: The Minerals Management Service (MMS), Royalty Management Program (RMP) is proposing changes to its recently-issued proposed rule regarding valuation of crude oil produced from Federal leases. MMS also is reopening the comment period to receive comments on the originally proposed rule and these additional changes. These revisions would modify the eligibility requirements for oil valuation for arm's-length transactions and the procedures for collecting oil exchange information. MMS also is amending the list of aggregation points to include additional locations inadvertently left out of the earlier proposal.

DATES: Comments must be submitted on or before August 4, 1997.

ADDRESSES: Mail written comments, suggestions, or objections regarding the proposed rule to: Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; courier address is Building 85, Denver Federal Center, Denver, Colorado 80225; or e:Mail David__Guzy@mms.gov. MMS will publish a separate notice in the **Federal Register** indicating dates and locations of public meetings regarding this proposed rulemaking.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, FAX (303) 231–3385, e:Mail David__Guzy@mms.gov, Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165.

SUPPLEMENTARY INFORMATION: The principal authors of this supplementary proposed rule are Deborah Gibbs Tschudy of RMP and Peter Schaumberg of the Office of the Solicitor.

I. Background

MMS published a notice of proposed rulemaking on January 24, 1997 (62 FR 3741), to amend its current Federal crude oil valuation regulations in 30 CFR Part 206. The initial comment period expired March 25, 1997, and was twice extended to April 28, 1997 (62 FR 7189), and to May 28, 1997 (62 FR 19966). Comments received to date are available for public inspection at the RMP offices in Lakewood, Colorado or on the Internet at http://www.rmp.mms.gov. MMS also will place any additional comments received on this rule on the Internet. Call David Guzy at (303) 231–3432 for further information.

By this notice, MMS is reopening the comment period until August 4, 1997.

II. Public Comments

As part of the public comment process, MMS held public meetings in Lakewood, Colorado on April 15, 1997, and Houston, Texas on April 17, 1997, to hear comments on the proposal.

MMS has received many comments on the proposed rule. There have been issues raised to date that MMS recognizes require changes to the proposed rule because they result in unintentional exceptions to use of gross proceeds for calculating royalty value by small producers.

MMS heard a number of comments from attendees at the public meetings about provisions in the proposal that would require small producers to pay based on index pricing instead of gross proceeds if they: (1) Made small-volume purchases of oil for lease operations or other purposes (see § 206.102(a)(6) of the proposed rule), or (2) had crude oil call provisions that were never exercised (see § 206.102(a)(5) of the proposed rule).

MMS also received comments about proposed new Form MMS–4415, the Oil Location Differential Report. These comments included complaints about the amount of information required, some of which the commenters believed that MMS does not need.

MMS met with representatives of the Independent Petroleum Association of America (IPAA), the Independent Petroleum Association of Mountain States (IPAMS), and the State of Louisiana on May 13–14, 1997. At that meeting, IPAA and IPAMS presented their comments on the January 24, 1997,

proposal, including the issues discussed above.

The IPAA submitted its written comments to MMS on May 15, 1997. In these comments, IPAA recommended that MMS allow companies that purchase oil and companies whose production is subject to crude oil calls to use gross proceeds under arm's-length contracts to determine value. IPAA also recommended that MMS revise its benchmarks for valuing production not sold under arm's-length contracts.

III. Revisions to Proposed Rule

After hearing these comments, MMS is amending the proposed rule to address significant concerns raised early in the public comment process and is reopening the comment period to receive additional comments on those minor changes to the proposed rule.

MMS's intent in proposed § 206.102(a)(4) was to exclude oil subject to crude oil calls from gross proceeds valuation because factors other than the real value of the oil may be affecting the price. However, excluding all oil ''subject'' to crude oil calls was too broad. MMS recognizes that in cases where crude oil calls are not exercised and the production is sold under an arm's-length contract, it may be unnecessary to use index prices to determine value. The arm's-length gross proceeds in such a circumstance may generally reflect the value of production. Also, if the production disposed of when a crude oil call is exercised is valued based upon the price that other parties are willing to competitively bid to purchase the production (the so-called Most Favored Nation clause), then the oil should not be subject to index pricing provisions under § 206.102(c).

Therefore, MMS is proposing to amend § 206.102(a)(4) to limit the exclusion from gross proceeds valuation to situations involving only non-competitive crude oil calls. That is, MMS is proposing that in a situation where there is a purchase sale agreement or farm out in which the purchaser of the property agrees to be subject to a non-competitive call by the seller of the property instead of paying full market value for the property, then the production would be valued under § 206.102(c). Also, a corresponding definition of ''non-competitive crude oil call'' is added to the proposed rule.

MMS does have some concerns about whether this proposal to allow valuation based on gross proceeds in a competitive call circumstance may result in undervaluation situations. For instance, we have concerns about a lessee's ability to know, and MMS's ability to obtain timely the pricing information needed to monitor adequately, whether the prices lessees are receiving are the highest prices under the Most Favored Nations clause and whether such prices are subject to discounts below true market prices and index values because of exchanges and other complex marketing arrangements. MMS would like specific comments on these concerns. MMS also would like comments to address the situation where the holder of the call may transfer the right to take the production to a third party and whether that might affect the gross proceeds paid to the lessee.

MMS is also proposing a further change to § 206.102(a)(4) to exclude one other category of arm's-length transactions from gross proceeds valuation. There are situations where two parties transact purchases and sales of oil that would appear to be arm's-length. However, the prices in the transactions are below market for the field or area. Neither party cares because they agree to sell roughly equivalent volumes to one another, either in the same field or another field, so any discount is enjoyed equally by the two parties. The royalty owners lose in this case because of the below-market valuation in the purportedly arm's-length sales. In these ''overall balance'' situations, MMS would require you to value the production based on index value under § 206.102(c)(2) instead of your gross proceeds. This situation would also be covered under § 206.102(a)(2), but MMS believes it would be preferable to address this situation directly in § 206.102(a)(4).

MMS also recognizes that the requirement in the proposed rule that purchasers of small amounts of oil must value oil using index prices is potentially too restrictive. It was not MMS's intent to require producers to pay royalties based on index prices if they purchase oil to make up for production shortfalls (meaning production insufficient to meet confirmed nominations or warranted volumes), or if they must purchase crude oil to operate their lease. MMS therefore is proposing to delete § 206.102(a)(6) as proposed in January.

MMS believes that the new proposed paragraph (a)(4) is sufficient to address the concerns that the original paragraph (a)(6) proposed in January intended to address. However, MMS has concerns about whether it can effectively enforce that provision prior to audit, therefore, MMS specifically requests comments on whether we should require lessees who value their production using gross proceeds received under an arm's-length contract to certify that they are not maintaining an ''overall balance'' with their purchaser. MMS also requests comments on whether we should amend § 206.102(a)(6) as proposed in January to specify purchase levels below which a lessee would not be required to value their production using index value.

MMS is proposing a new paragraph (a)(6) to address oil production you dispose of under certain exchange agreements. Under this proposed new paragraph, if you dispose of your oil under an exchange agreement with a person who is not affiliated with you, and if after the exchange you sell the acquired oil under an arm's-length contract, you may use either § 206.102(a) or (c)(2) to value your production. This means you would have a choice to value your production based on either gross proceeds or index value. If you elect to use gross proceeds, you would use the gross proceeds from your arm's-length sale of the oil after the exchange, adjusted for any location or quality differences paid or received under the arm's-length exchange agreement.

For example, assume that Company X produces 100 barrels of oil from a Federal lease and enters into an exchange agreement with Company Y (who is not affiliated with Company X). Under the exchange agreement, Company Y is providing an equal volume of higher gravity oil, so Company X is paying a 25-cent-per-barrel quality differential. After the exchange, Company X sells the oil arm's-length to Company Z for $20 per barrel. Company X could use either § 206.102(c)(2) and value its lease production based on index value, or use its gross proceeds received under the arm's-length contract with Company Z adjusted for quality and location, in this example $19.75.

If you transfer your Federal lease production to an affiliate, and that affiliate enters into an arm's-length exchange agreement, (a)(6)(i) would not apply. Nor would it apply if the oil you receive back in an exchange agreement is transferred to an affiliate before it is sold. In both of these cases, the transfer to an affiliate before or after the exchange is considered a non-arm's-length sale that would be valued under § 206.102(c)(2). Further, you may use (a)(6)(i) only if there is a single exchange before you sell the oil arm's-length. You must use index value under § 206.102(c)(2) if you enter into a second (or third, etc.) exchange for the oil you received back from your exchange partner in the first exchange.

Proposed § 206.102(a)(6)(iii) explains that if you use gross proceeds under § 206.102(a) to value production subject to paragraph (a)(6)(i), you must make that election for all oil production disposed of under all other arm's-length exchange agreements that are subject to paragraph (a)(6)(i).

MMS also is amending § 206.102(a)(1) to clarify that the exceptions to valuing oil sold under arm's-length contracts based on gross proceeds are transaction or contract specific. That is, if you have one arm's-length contract that is subject to a non-competitive crude oil call, then that does not necessarily mean that all of your Federal production must be valued under § 206.102(c).

MMS also heard comments concerning the filing of Form MMS–4415. Comments asked for clarification on who must file the form and what information is required. MMS developed this form to gather information on the relative value of crude oil involved in exchange agreements and to determine appropriate location and quality differentials between the aggregation points and the market centers. To calculate specific differentials, MMS would take the volume-weighted average of the individual differentials derived from information payors report on Form MMS–4415. MMS will collect only information about exchanges where delivery occurs at an aggregation point and a market center. MMS seeks comments on the usefulness of collecting information about exchanges between two aggregation points. Lessees would not be required to report information from exchanges where oil is exchanged at the lease.

During the public hearings, MMS also received comments on whether MMS should collect information about exchanges between aggregation points and market centers from other than Federal lease production. Obviously, if only Federal production is commingled at a particular aggregation point, MMS would only need information regarding Federal lease production. MMS seeks comment on how lessees would allocate to Federal leases differentials from aggregation points to market centers when non-Federal production is commingled with Federal production at aggregation points.

The January 24, 1997, proposal for valuing Federal crude oil contained a list of aggregation points in Appendix H. That listing was incomplete. This supplementary proposed rule revises Appendix H to include more aggregation points.

MMS specifically requests comments on the revised paragraphs addressed in this notice. MMS also requests comments on alternatives for valuing production not sold under arm's-length contracts—§ 206.102(c). Specifically, MMS requests comments on alternatives based on lease market indicators that are readily available contemporaneously. You also may comment further on any other provision in the January 24 proposed rule. If you already submitted written comments on other portions of the rule, you do not need to resubmit those comments.

List of Subjects in 30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indians-lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated June 26, 1997.

Bob Armstrong,

Assistant Secretary for Land and Minerals Management.

For the reasons set forth in the preamble, the proposed rule published at 62 FR 3741, on January 24, 1997, amending 30 CFR Part 206, is further amended as follows:

PART 206—PRODUCT VALUATION

1. The Authority citation for Part 206 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*; 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 351 *et seq.*; 1001 *et seq.*; 1701 *et seq.*; 31 U.S.C. 9701.; 43 U.S.C. 1301 *et seq.*; 1331 *et seq.*; and 1801 *et seq.*

Subpart C—Federal Oil

2. Section 206.101 as proposed to be revised at 62 FR 3751 is further amended by adding the following definition to read as follows:

§ 206.101 Definitions.

Non-competitive crude oil call means a purchase sale agreement or farm out in which the buyer of the property agrees to be subject to a call on their production that does not contain a Most Favored Nations clause or a similar clause in which the price is based on what other parties are willing to competitively bid to purchase the production.

3. Section 206.102 as proposed to be revised at 62 FR 3752 is further amended by revising paragraphs (a)(1), (a)(4), and (a)(6) to read as follows:

§ 206.102 How do I calculate royalty value for oil?

* * * * *

(a) * * *

(1) Paragraphs (a)(2) through (a)(6) of this section contain exceptions to the valuation rule in paragraph (a) of this section. Apply these exceptions on an individual contract basis.

* * * * *

(4) You must use paragraph (c)(2) of this section to value oil disposed of under:

(i) An exchange agreement, except as provided in paragraph (a)(6) of this section;

(ii) An arm's-length contract between a buyer and seller in which the contract price does not represent market value in the field or area because an overall balance between volumes bought and sold is maintained between that buyer and seller; or

(iii) The exercise of a non-competitive crude oil call. If you dispose of your oil under a competitive crude oil call, value your oil under § 206.102(a).

* * * * *

(6) (i) If you dispose of your oil under an exchange agreement with a person who is not affiliated with you, and if after the exchange you sell the acquired oil under an arm's-length contract, you may use either § 206.102(a) or § 206.102(c)(2) to value your production for royalty purposes. If you use § 206.102(a), your gross proceeds are the gross proceeds under your arm's-length contract after the exchange occurs, adjusted for any location or quality differential or other adjustments you received or paid under the arm's-length exchange agreement.

(ii) You must use § 206.102(c)(2) to value your production if you transfer your oil to an affiliate before the exchange occurs. You also must use § 206.102(c)(2) to value your oil if you transfer the oil you receive in the exchange to an affiliate or if you enter into a second exchange for the oil you received back under your first exchange.

(iii) If you value production under § 206.102(a)(6)(i), you must make the same election for all of your production disposed of under arm's-length exchange agreements that are subject to § 206.102(a)(6)(i).

* * * * *

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix H to Preamble of Oil Valuation Rule

State	Station location	County/offshore location
AL	Marion Corp. Connection	Mobile.
AL	Mobile	Mobile.
AL	Saraland Terminal	Mobile.
AL	Ten Mile Point Terminal	Mobile.
CA	Coalinga	Fresno.
CA	Belridge	Kern.
CA	Fellows	Kern.
CA	Kelley	Kern.
CA	Leutholtz Jct	Kern.
CA	Pentland	Kern.
CA	Midway	Kern.
CA	Station 36-Kern River	Kern.
CA	Newhall	Los Angeles.
CA	Sunset	Los Angeles.
CA	Cadiz	San Bernadino.
CA	Avila	San Luis Obispo.
CA	Gaviota Terminal	Santa Barbara.
CA	Lompoc	Santa Barbara.
CA	Sisquoc Jct	Santa Barbara.
CA	Filmore	Ventura.
CA	Rincon	Ventura.
CA	Ventura	Ventura.
CA	Junction	(County Unknown).
CA	Lake	(County Unknown).
CA	Rio Bravo	(County Unknown).
CA	Santa Paula	(County Unknown).
CA	Signa	(County Unknown).
CA	Stewart	(County Unknown).
CO	Denver	Adams.
CO	Cheyenne Wells Station	Cheyenne.
CO	Iles	(County Unknown).
CO	Sterling	Logan.
CO	Fruita	Mesa.
CO	Rangley	Rio Blanca.
KS	Humbolt-Williams P.L	Allen.
KS	Augusta	Butler.
KS	Eldorado	Butler.
KS	Harper's Ranch	Clark.
KS	Arkansas City	Cowley.
KS	McPherson Sta	McPherson.
KS	Caney	Montgomery.
KS	Laton Sta	Osborne.
KS	Herndon Station	Rawlings.
KS	Rawlings Sta	Rice.
KS	Lyons Station	Sedgwick.
KS	Valley Center	Thomas.
KS	Bemis St	(County Unknown).
KS	Broome St	(County Unknown).
KS	Towlanda	(County Unknown).
LA	Brown Sta	Caddo.
LA	Clifton Ridge	Calcasieu.
LA	Conoco Jct	Calcasieu .
LA	Lake Charles	Calcasieu
LA	Pecan Grove	Calcasieu.
LA	Rose Bluff	Calcasieu.
LA	Texaco Jct	Calcasieu.
LA	Grand Chenier Term	Cameron.
LA	Hainesville Sta	Claiborne.
LA	Maryland	East Baton Rouge.
LA	Bayou Fifi	Jefferson.
LA	Grand Isle	Jefferson.
LA	Bay Marchand Term	Lafourche.
LA	Bayou Fourchon	Lafourche.
LA	Clovelly	Lafourche.
LA	Clovelly Storage Dome	Lafourche.
LA	Elmers Jct	Lafourche.
LA	Fourchon Terminal	Lafourche.
LA	Golden Meadow	Lafourche.
LA	Larose Barge Terminal	Lafourche.
LA	Pass Fourchon P.L.	Lafourche.
LA	Blk. 28 Tie-in	Offshore East Cameron.
LA	Blk. 23	Offshore Eugene Island.

State	Station location	County/offshore location
LA	Blk. 51 B Platform	Offshore Eugene Island.
LA	Blk. 188 A Structure	Offshore Eugene Island.
LA	Blk. 259	Offshore Eugene Island.
LA	Blk. 316	Offshore Eugene Island.
LA	Blk. 337 Subsea Tie-in	Offshore Eugene Island.
LA	Blk. 361	Offshore Eugene Island.
LA	Texas P.L. Subsea Tie-in	Offshore Eugene Island.
LA	Blk. 17	Offshore Grand Isle.
LA	Blk. 42—Chevron P.L.	Offshore Main Pass.
LA	Blk. 42L	Offshore Main Pass.
LA	Blk. 69 B Plat.	Offshore Main Pass.
LA	Blk. 77 (Pompano P.L. Jct.)	Offshore Main Pass.
LA	Blk. 144 Structure A	Offshore Main Pass.
LA	Blk. 298 Plat. A	Offshore Main Pass.
LA	Blk. 299 Platform	Offshore Main Pass.
LA	Blk. 28	Offshore Ship Shoal.
LA	Blk. 154	Offshore Ship Shoal.
LA	Blk. 169	Offshore Ship Shoal.
LA	Blk. 203 Subsea Tie-in	Offshore Ship Shoal.
LA	Blk. 208	Offshore Ship Shoal.
LA	Blk. 208 B Structure	Offshore Ship Shoal.
LA	Blk. 208 F	Offshore Ship Shoal.
LA	Ship Shoal Area	Offshore Ship Shoal.
LA	Blk. 6	Offshore South Marsh Island.
LA	Blk. 10—Structure A	Offshore South Marsh Island.
LA	Blk. 58A	Offshore South Marsh Island.
LA	Blk. 139	Offshore South Marsh Island.
LA	Blk. 139 Subsea Tap Valve Connect	Offshore South Marsh Island.
LA	Blk. 207—Light House Point A	Offshore South Marsh Island.
LA	Blk. 268—Platform A	Offshore South Marsh Island.
LA	Blk. 55	Offshore—South Pass.
LA	Blk. 13 (Wesco P.L. Subsea Tie-in)	Offshore—South Pelto.
LA	Blk. 35 Platform D	Offshore—S. Timbalier.
LA	Blk. 52 Plat. A	Offshore—S. Timbalier.
LA	Blk. 172 Plat. D	Offshore—S. Timbalier.
LA	Blk. 196 Exxon P.L. System Tie-in	Offshore—S. Timbalier.
LA	Blk. 300	Offshore—S. Timbalier.
LA	Blk. 255	Offshore Vermilion.
LA	Blk. 265 Platform A	Offshore Vermilion.
LA	Blk. 350	Offshore Vermilion.
LA	Blk. 30	Offshore—West Delta.
LA	Blk. 53	Offshore—West Delta.
LA	Blk. 53 Plat. B	Offshore—West Delta.
LA	Blk. 53B—Chevron P.L	Offshore—West Delta.
LA	Blk. 53B Plat. Gulf Refining Co	Offshore—West Delta.
LA	Blk. 83	Offshore—West Delta.
LA	Alliance Refinery	Plaquemines.
LA	Empire Terminal	Plaquemines.
LA	Main Pass	Plaquemines.
LA	Main Pass Blk. 69	Plaquemines.
LA	Ostrica Term	Plaquemines.
LA	Pelican Island	Plaquemines.
LA	Pilottown	Plaquemines.
LA	Romere Pass	Plaquemines.
LA	South Pass Blk. 60A	Plaquemines.
LA	South Pass Blk. 27	Plaquemines.
LA	Onshore facil	Plaquemines.
LA	South Pass Blk. 24	Plaquemines.
LA	South Pass Blk. 24 Onshore Plat	Plaquemines.
LA	Southwest Pass Sta	Plaquemines.
LA	West Delta Blk. 53	Plaquemines.
LA	West Delta Rec'vg Sta.—Onshore	Plaquemines.
LA	Dehli	Richland.
LA	Chalmette	St. Bernard.
LA	Norco (Shell Refinery)	St. Charles.
LA	St. James	St. James.
LA	Bayou Sale	St. Mary.
LA	Burns Term	St. Mary.
LA	Charenton	St. Mary.
LA	South Bend	St. Mary.
LA	Caillou Island	Terrebonne.
LA	Caillou Island Fld	Terrebonne.
LA	Gibson Term	Terrebonne.
LA	Erath	Vermilion.

State	Station location	County/offshore location
LA	Forked Island	Vermilion.
LA	Mermentau River Station	Vermilion.
LA	Anchorage	West Baton Rouge.
LA	Grand Lake Terminal	(County unknown.)
LA	Twin Island Terminal	(County unknown.)
LA	Lakeside Terminal	(County unknown.)
LA	Bayou Penchant Terminal	(County unknown.)
LA	Gibbstown Terminal	(County unknown.)
LA	Bluewater Terminal	(County unknown.)
LA	Cocodrie Terminal	(County unknown.)
MI	Bay City	Bay.
MI	Montcalm	Carson City.
MI	Lewiston	Crawford.
MI	Kalamazoo	Fulton Takeoff.
MI	Alma	Gratiot
MI	St. Clair	Marysville.
MI	Monroe	Samaria Sta.
MI	Ingham	Stockbridge.
MI	Detroit	Wayne.
MI	Ogemaw	West Branch.
MS	Liberty	Amite.
MS	Mayersville	Issaquena.
MS	Pascogoula	Jackson.
MS	Soso	Jones.
MS	Lumberton	Lamar.
MS	Purvis	Lamar.
MS	Collierville Station	Marshall.
MT	Silver Tip Station	Carbon.
MT	Alzada	Carter.
MT	Richey Station	Dawson.
MT	Baker	Fallon.
MT	Cut Bank Station	Glacier.
MT	Bell Creek Station	Powder River.
MT	Poplar Station	Roosevelt.
MT	Billings	Yellowstone.
MT	Laurel	Yellowstone.
MT	Clear Lake Sta	(County Unknown).
ND	Fryburg Station	Billings.
ND	Tree Top Station	Billings.
ND	Lignite	Burke.
ND	Alexander	McKenzie.
ND	Keene	McKenzie.
ND	Killdear	Dunn.
ND	Mandan	Morton.
ND	Tioga	Ramberg.
ND	Ramberg	Williams.
ND	Thunderbird Refinery	Williams.
ND	Tioga	Williams.
ND	Trenton	Williams.
NM	Jal	Lea.
NM	Lovington	Lea.
NM	Ciniza	McKinley.
NM	Bisti Jct	San Juan.
NM	Navajo Jct	San Juan.
TX	Carson Station	Archer.
TX	Holliday	Archer.
TX	Fullerton	Andrews.
TX	Buccaneer Term	Brazoria.
TX	Sweeney Sta	Brazoria.
TX	Mont Belvieu	Chambers.
TX	Crane	Crane.
TX	Ranger	Eastland.
TX	Caproch Jct	Ector.
TX	Odessa	Ector.
TX	North Cowden	Ector.
TX	Wheeler	Ector.
TX	El Paso	El Paso.
TX	Missouri City Jct	Fort Bend.
TX	Winnsboro	Franklin.
TX	Worthham	Freestone.
TX	Pearsall Sta	Frio.
TX	Texas City	Galveston.
TX	Roberts	Glasscock.
TX	Covey Station	Grayson.

State	Station location	County/offshore location
TX	Bumpus Sta	Gregg.
TX	Kilgore St	Gregg.
TX	Longview	Gregg.
TX	Longview Mid-Valley	Gregg.
TX	Sabine Sta. Amoco P.L	Gregg.
TX	Mobil Jct	Hardin.
TX	Sour Lake	Hardin.
TX	Baytown	Harris.
TX	Exxon Jct	Harris.
TX	Genoa Jct	Harris.
TX	Houston	Harris.
TX	Pasadena	Harris.
TX	Webster	Harris.
TX	Hillsboro	Hill.
TX	Big Spring	Howard.
TX	Phillips Hutchinson	Howard.
TX	Jacksboro Sta	Jack.
TX	Beaumont	Jefferson.
TX	Lucas	Jefferson.
TX	Nederland	Jefferson.
TX	Port Arthur	Jefferson.
TX	Port Neches	Jefferson.
TX	Sabine Pass	Jefferson.
TX	Mexia Jct	Limestone.
TX	Midland	Midland.
TX	Colorado City Station	Mitchell.
TX	McKee	Moore.
TX	Corsicanna	Navarro.
TX	American Petrofina	Nueces.
TX	Corpus Christi	Nueces.
TX	Harbor Island	Nueces.
TX	Beaver Station	Ochiltree.
TX	Blk. 474-Inters. Seg. III, III–7	Offshore—High Island.
TX	Blk. A—571	Offshore—High Island.
TX	End Segment II	Offshore—High Island.
TX	End Segment III—10	Offshore—High Island.
TX	End Segment III—10 (Blk. 547)	Offshore—High Island.
TX	End Segment III—6	Offshore—High Island.
TX	Irran Sta	Pecos.
TX	Kemper	Reagan.
TX	Mason Jct	Reeves.
TX	Rufugio Sta	Rufugio.
TX	Midway	San Patricio.
TX	Eldorado	Scheicher.
TX	Basin Station	Scurry.
TX	Colorado City	Scurry.
TX	Ft. Worth	Tarrant.
TX	Merkel	Taylor.
TX	Tye	Taylor.
TX	McCamey	Upton.
TX	Mesa Sta	Upton.
TX	Burkburnett	Wichita.
TX	KMA—Total P.L	Wichita.
TX	Wichita Falls	Wichita.
TX	Halley	Winkler.
TX	Hendrick/Hendrick-Wink	Winkler.
TX	Keystone	Winkler.
TX	Wink	Winkler.
TX	South Bend	Young.
TX	Channel View Jct	(County Unknown).
TX	Clear Creek Sta	(County Unknown).
TX	Oyster Lake Term	(County Unknown).
TX	Queens Jct	(County Unknown).
TX	Spacek Sta	(County Unknown).
TX	Jolly Jct	(County Unknown).
TX	Nettleton Sta	(County Unknown).
TX	Trent Sta	(County Unknown).
VT	North Troy International Boundary	Orleans.
WA	Anacortes	Whatcom.
WA	Ferndale	Whatcom.
WI	Superior Terminal	Douglas.
WV	St. Marys	Pleasant.
UT	Salt Lake Station	Davis.
UT	Wood Cross	Davis.

State	Station location	County/offshore location
UT	Salt Lake City	Salt Lake.
UT	Aneth	San Juan.
UT	Patterson Canyon Jct	San Juan.
UT	Bonanza Station	Uintah.
UT	Red Wash Station	Uintah.
WY	Rock River	Albany.
WY	Byron	Big Horn.
WY	Central Hilight Sta	Cambell.
WY	Rocky Point	Cambell.
WY	Ferris Jct	Carbon.
WY	Big Muddy Sta	Converse.
WY	Glenrock	Converse.
WY	Lightening Flats	Crook.
WY	Pilot Butte Sta	Freemont.
WY	Ft. Laramie	Goshen.
WY	Cottonwood Jct	Hot Springs.
WY	Crawford Sta	Johnson.
WY	Reno	Johnson.
WY	Sussex	Johnson.
WY	Cheyenne	Laramie.
WY	Casper	Natrona.
WY	Noches	Natrona.
WY	Lance Creek Station	Niobrara.
WY	Frannie Sta	Park.
WY	Oregon	Park.
WY	Oregon Basin Sta	Park.
WY	Bridger Station	Uinta.
WY	Chatham Sta	Washakie.
WY	Butte Sta	Weston.
WY	Mush Creek Jct	Weston.
WY	Osage Station	Weston.

[FR Doc. 97–17312 Filed 7–2–97; 8:45 am]
BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 84

[CGD 95–037]

Adequacy of Barge and Tug Navigation Lights

AGENCY: Coast Guard, DOT.

ACTION: Notice of termination.

SUMMARY: This request for comments was initiated in response to concerns expressed by the marine community, both commercial and recreational, that current lighting requirements for towing vessels and vessels being towed are not adequate. The Coast Guard solicited public input regarding current lighting requirements. However, after review and discussion of the comments, the Coast Guard has concluded that there are no problems with the lighting of underway tug and barge combinations which can be addressed through changes to current lighting requirements for towing vessels and vessels under tow. Therefore, the Coast Guard is terminating further action under docket number 95–037.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Schneider, Project Manager, Vessel Traffic Management Division (G–MOV), (202) 267–0415.

DATES: This termination is effective on July 3, 1997.

SUPPLEMENTARY INFORMATION: The Inland Navigation Rules (Navigation Rules) are set forth in 33 U.S.C. 2001, *et seq.*, and Commandant Instruction M16672.2C. (The Inland Navigation Rules also will be set forth in future versions of this Commandant Instruction which will likely be issued under slightly different instruction numbers.) Under 33 U.S.C. 2071, the Secretary of Transportation may issue regulations to implement and interpret the Navigation Rules. The Secretary is also directed to establish technical annexes. The technical annex for lighting requirements is contained in 33 CFR part 84. This annex specifies placement requirements for lights, including placement of lights on towing vessels and vessels under tow.

Safety concerns associated with towing operations and small craft traffic have been raised in recent years in several publications, including the *American Boat and Yacht Council Newsletter, U.S. Coast Guard Boating Safety Circulars,* America's Inland and Coastal Tug and Barge Operators pamphlet ''Life Lines'', and various yachting magazines. The safety aspects of barge lighting were discussed at the May 1994 meeting of National Boating Safety Advisory Council (NBSAC). At its November 1994 meeting, the Navigation Safety Advisory Council (NAVSAC) was asked to consider whether current tug and tow lighting requirements under Navigation Rule 24 are adequate.

NAVSAC concluded that additional information was needed to determine whether there was an actual problem, and, if so, to determine possible solutions. The Council unanimously passed a resolution requesting that the Coast Guard solicit public comments on whether towing vessels and vessels being towed are sufficiently lighted while underway.

On May 9, 1995, the Coast Guard published a Request for Comments in the **Federal Register** (60 FR 24598). The Coast Guard received 94 comments. In response to some of these comments, the Coast Guard published a notice (60 FR 53726; October 17, 1995) and held a public meeting at the Holiday Inn Downtown/Convention Center, 811 North Ninth Street, St. Louis, MO 63101 on November 11, 1995.

After careful review and discussion of the comments, NAVSAC determined that the problems associated with the lighting of barges were not due to the lighting configuration but rather due to other factors. The Coast Guard agrees

that other factors—such as the lack of boater education in recognizing lighting configurations; no licensing requirement for recreational boaters; boating while intoxicated; and the lack of compliance with existing lighting requirements—are responsible for the problems. Therefore, no rulemaking is necessary, and the Coast Guard is terminating further action under docket number 95–037.

Dated: June 24, 1997

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97–17471 Filed 7–2–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

Board of Veterans' Appeals

38 CFR Part 19

RIN 2900–AI50

Appeals Regulations: Remand for Further Development

AGENCY: Board of Veterans' Appeals, Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to change the appeals regulations of the Board of Veterans' Appeals (Board) of the Department of Veterans Affairs (VA). The regulations would be changed regarding the circumstances in which the Board must remand a case to the VA field facility with original jurisdiction in the case. The changes are proposed to help avoid unnecessary remands.

DATES: Comments must be received on or before August 4, 1997.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AI72.'' All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Chief Counsel, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202–565–5978).

SUPPLEMENTARY INFORMATION: The Board is an administrative body that decides appeals from denials of claims for veterans' benefits. The appeals come to the Board from ''agencies of original jurisdiction'' (AOJs), typically one of VA's 58 regional offices.

The provisions of 38 CFR 19.9 require the Board to remand a case to the AOJ if ''it [were] determined that further evidence or clarification of the evidence or correction of a procedural defect is essential for a proper appellate decision.'' The current rule appears to be unsatisfactory in two ways.

First, § 19.9 only imposes the requirement for a remand; it does not except specific kinds of evidentiary development we intended the Board to carry out without remand to an AOJ. Those specific kinds of evidentiary development are (1) Board requests for opinions from the VA Under Secretary for Health, the Armed Forces Institute of Pathology, the VA General Counsel, and independent medical experts under 38 CFR 20.901, see *Austin* v. *Brown,* 6 Vet. App. 547, 553–54 (1994), and (2) Board supplementation of the record with recognized medical treatises in accordance with *Colvin* v. *Derwinski,* 1 Vet. App. 171, 175 (1991). Proposed § 19.9(b) would except from the remand requirement each of these kinds of evidentiary development, as well as matters over which the Board has original jurisdiction.

Second, by requiring a remand to correct a procedural defect whose correction is essential for a proper appellate decision, § 19.9 causes unnecessary remands because some procedural defects cannot be corrected by an AOJ or can be corrected more efficiently by the Board itself. For example, if an appellant's desires concerning a hearing are unclear, the Board can clarify them as easily as can an AOJ. A remand merely for clarification of an appellant's hearing desires would be time-consuming, and premature if the appellant wanted a hearing before the Board. Therefore, it is proposed to amend § 19.9(a) to not require a remand to clarify procedural matters before the Board, such as an appellant's request for a hearing before the Board.

Avoiding unnecessary remands helps the Board reduce its response time on appeals. A remand by the Board is in the nature of a preliminary order, not a final Board decision, 38 CFR 20.1100(b); *Zevalkink* v. *Brown,* 6 Vet. App. 483, 488 (1994), and results in at least one additional adjudication at the AOJ, 38 CFR 19.38. If that additional adjudication does not result in the granting of all benefits sought, the case must be returned to the Board for a final decision. *Id.* In any event, a remand necessarily extends the time an appellant must wait for a final decision on his or her claim. In addition, because the majority of remands eventually return to the Board for adjudication, remands increase the Board's response time on appeals in general.

Remands for technical reasons that do not affect an appellant's right to due process—such as the choice of representative, clarification of the issues on appeal, or requests for hearings before the Board—do not produce evidence which can result in a grant of benefits by the AOJ. Particularly when such clarification could be easily undertaken by the Board, those remands result only in a return of the case to the Board with procedural clarification, needless delay for the individual appellant and additional delay for all appellants. The purpose of this proposal to change § 19.9 is to reduce unnecessary remands, while protecting appellants' right to have any evidence considered in the first instance by the AOJ.

Proposed § 19.9 would require the Board to remand a case to the AOJ when additional evidence or clarification of the evidence or correction of a procedural defect is essential for a proper appellate decision, but would specify that the Board need not remand a case to clarify procedural matters before the Board, such as the choice of representative, the issues on appeal, or requests for hearings before the Board.

The proposed rule would not apply to requests for medical or legal opinions under 38 CFR 20.901, which continue to be exceptions to the general rule requiring remand to the AOJ if new evidence is properly before the Board. See *Austin* v. *Brown,* 6 Vet. App. 547, 553–54 (1994) (§ 20.901 ''appear[s] to be the exclusive regulatory exception to the general rule of mandatory remand under § 19.9''). The rule also would not apply to matters in which the Board has original jurisdiction under 38 CFR 20.609 (relating to representatives' fees) and § 20.610 (relating to representatives' expenses), since those cases, by their terms, do not involve adjudications by AOJs.

VA routinely provides for a 60-day comment period for proposed rules. However, the comment period for this document is shortened to 30 days. We believe that VA should consider the issues raised by this document on an expedited basis since it appears that adoption of the proposal would help avoid unnecessary remands.

The Secretary hereby certifies that the adoption of the proposed rule would not

have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would affect only VA's processing of claims and will not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

List of Subjects in 38 CFR Part 19

Administrative practice and procedure, Claims, Veterans.

Approved: June 25, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 19 is proposed to be amended as set forth below:

PART 19—BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS

1. The authority citation for part 19 continues to read as follows:

Authority: 38 U.S.C. 501(a).

2. In subpart A, § 19.9 is revised to read as follows:

§ 19.9 Remand for further development.

(a) *General.* If further evidence or clarification of the evidence or correction of a procedural defect is essential for a proper appellate decision, a Member or panel of Members of the Board shall remand the case to the agency of original jurisdiction, specifying the action to be undertaken. A remand is not required to clarify procedural matters before the Board, including appellant's choice of representative before the Board, the issues on appeal, and requests for hearings before the Board.

(b) *Scope.* This section does not apply to:

(1) The Board's requests for opinions under Rule 901 (§ 20.901 of this chapter);

(2) The Board's supplementation of the record with recognized medical treatises; and

(3) Matters over which the Board has original jurisdiction described in Rules 609 and 610 (§§ 20.609 and 20.610 of this chapter).

(Authority: 38 U.S.C. 7102, 7103(c), 7104(a))

[FR Doc. 97–17414 Filed 7–2–97; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL–5852–8]

Operating Permits Program; Notice to Defer Comments on Draft Part 70 Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice to defer comments.

SUMMARY: Today's document advises the public to defer comment on draft revisions to the operating permits regulations in part 70 of chapter I, title 40, of the Code of Federal Regulations and an accompanying memorandum of options. The draft regulatory revisions and accompanying memorandum were made available for public review on May 14, 1997. Availability of the draft revisions and a 30-day comment period was announced in the **Federal Register** on June 3, 1997. The regulatory revisions will be revised and reissued for review with a new comment period.

DATES: As specified in the June 3, 1997 notice, if comments on the May 14, 1997 draft part 70 revisions are submitted, they must still be received by July 3, 1997. However, a new draft will be issued at a future date with an accompanying 30-day period for review and comment.

ADDRESSES: The current draft part 70 revisions and accompanying memorandum are available in EPA's Air Docket number A–93–50 as items VI–A–1, VI–A–2, and VI–A–3. The future revised draft will also be placed in this docket and will be announced in a future notice of availability in the **Federal Register**. This docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday. A reasonable fee may be charged for copying. The address of the EPA air docket is: U.S. EPA, Air Docket Office (6102), Attention: Docket Number A–93–50, Room M–1500, Waterside Mall, 401 M Street Southwest, Washington, DC 20460.

The current draft regulatory revisions and accompanying memorandum (and the future revised draft) may also be downloaded from the Internet at: http://134.67.104.12/html/caaa/t5pg.htm or http://ttnwww.rtpnc.epa.gov.

FOR FURTHER INFORMATION CONTACT: Ray Vogel (telephone 919–541–3153) or Roger Powell (telephone 919–541–5331), U.S. EPA, Information Transfer and Program Integration Division (MD–12), Research Triangle Park, North Carolina 27711. Internet addresses are: vogel.ray@epamail.epa.gov and powell.roger@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On June 3, 1997, EPA announced in the **Federal Register** (62 FR 30289) availability for public review of a May 14, 1997 draft regulatory revisions package that, when published, will promulgate revisions to the part 70 operating permit regulations. The May 14, 1997 draft was made available on EPA's Technology Transfer Network computer bulletin board and was placed in the Agency's air docket number A–93–50. The EPA also made available a memorandum of options relating to ''minor permit revisions'' that are under consideration for the final revisions. The public was asked to submit comments on these draft regulatory revisions and the additional options by July 3, 1997. Today's notice defers comment on the draft part 70 regulatory revisions until a future draft is made available for review and comment.

Since May 14, 1997, the Agency has continued to address issues associated with the draft part 70 permit revisions and the accompanying options. When these issues are adequately addressed, the Agency will revise the draft part 70 regulations and provide an opportunity for public comment. Consequently, EPA advises the public to forgo comment on the May 14, 1997 draft revisions and accompanying options and wait until the revised draft provisions are made available for public review. The comment period for the revised draft will be published in a future **Federal Register** notice.

Dated: June 18, 1997.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 97–17477 Filed 7–2–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 385

[FHWA Docket No. MC–94–22; FHWA–97–2252]

RIN 2125–AC–71

Safety Fitness Procedure; Safety Ratings

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Proposed rule; additional comments.

SUMMARY: On May 28, 1997, the FHWA published a notice of proposed rulemaking in response to a decision of the U.S. Court of Appeals, District of Columbia. In the rulemaking the FHWA proposed to incorporate a modified Safety Fitness Rating methodology, which would be used to measure the safety fitness of motor carriers against the safety fitness standard, as an appendix to its Safety Fitness Procedures regulations.

On February 7, 1997, the FHWA received data from the ATA Litigation Center on behalf of the American Trucking Association (ATA). The comments concerned the sampling methodology used by the FHWA in conducting compliance reviews, which the ATA believes to be biased. Subsequently, on May 29, 1997, the ATA asked that these comments be placed in the docket for consideration in this rulemaking.

The comments are being placed in Docket No. MC–94–22; FHWA–97–2252 and will be considered in this rulemaking.

DATES: Comments on this rulemaking must be received on or before July 28, 1997.

ADDRESSES: The ATA Litigation Center comments will be considered in this rulemaking and are being placed in Docket No. MC–94–22; FHWA–97–2252 at U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, D.C. 20590–0001. These comments and all others received will be available for examination at the above address from 10 a.m. to 5 p.m., e.t. Monday through Friday, except Federal holidays. Those persons or organizaions desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Hill, Vehicle and Operations Division, Office of Motor Carrier Research and Standards, (202) 366–4009, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m to 4:15 p.m., e.t., Monday through Friday, except holidays.

(49 U.S.C. 104, 504, 521 (b)(5)(A), 5113, 31136, 31144, and 31502; 49 CFR 1.48)

Issued on: June 24, 1997.

Jane Garvey,

Acting Administrator for the Federal Highway Administration.

[FR Doc. 97–17308 Filed 7–2–97; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 970626157–7157–01; I.D. 041697C]

RIN 0648–AJ65

Atlantic Tuna Fisheries; Atlantic Bluefin Tuna Effort Controls

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; public hearings; request for comments.

SUMMARY: NMFS proposes to amend the regulations governing the Atlantic tuna fisheries to set Atlantic bluefin tuna (ABT) General category effort controls for the 1997 fishing year. The proposed regulatory amendments are necessary to achieve domestic management objectives. NMFS will hold public hearings to receive comments from fishery participants and other members of the public regarding these proposed amendments.

DATES: Comments are invited and must be received on or before July 17, 1997. The hearings are scheduled as follows:

1. Tuesday, July 8, 1997, 7 to 10 p.m., Plymouth, MA.

2. Wednesday, July 9, 1997, 7 to 10 p.m., Brunswick, ME.

3. Wednesday, July 9, 1997, 7 to 9 p.m., Silver Spring, MD.

ADDRESSES: Comments on the proposed rule should be sent to, and copies of supporting documents, including a Draft Environmental Assessment-Regulatory Impact Review (EA/RIR), are available from, Rebecca Lent, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282.

The hearing locations are:

1. Plymouth—Plymouth North High School, Obery Street, Plymouth, MA 02360.

2. Brunswick—Atrium Inn and Conference Center, Cooks Corner, Brunswick, ME 04011.

3. Silver Spring—Holiday Inn, 8777 Georgia Avenue, Silver Spring, MD 20910.

These public hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Rebecca Lent by July 3, 1997.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301–713–2347, or Mark Murray-Brown, 508–281–9260.

SUPPLEMENTARY INFORMATION: The Atlantic tuna fisheries are managed under the authority of the Atlantic Tunas Convention Act (ATCA). ATCA authorizes the Secretary of Commerce (Secretary) to issue regulations as may be necessary to carry out the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to carry out ICCAT recommendations has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

Relation to Advance Notice of Proposed Rulemaking (ANPR)

These proposed amendments address in part comments submitted to NMFS in response to an ANPR (61 FR 48876, September 17, 1996). In the ANPR, NMFS requested comment on measures necessary to implement quota modifications and/or any other management recommendations for Atlantic tunas following the 1996 meeting of ICCAT. As stated in the ANPR, NMFS is required under ATCA to establish ABT quotas consistent with the recommendations of ICCAT. Under this legislative requirement, allocation of the U.S. ABT quota has been designed to collect the scientific information necessary to monitor the status of the ABT resource and, consistent with this, to achieve an equitable distribution of fishing opportunities to all fishing categories and all geographic areas.

The ANPR established a 30-day comment period during which NMFS received numerous comments on General category effort controls.

In the 1995 and 1996 General category fishery, NMFS implemented time-period subquotas and restricted fishing days to increase the likelihood that fishing would continue throughout the summer and fall for scientific monitoring purposes. These subquotas also were designed to address concerns regarding allocation of fishing opportunities, to allow for a late season fishery, and to improve market conditions. Due to delayed effectiveness, monthly quotas were not fully implemented in 1995. In order to evaluate fully the potential of an effort control system using monthly quotas and restricted fishing days, the program was reinitiated for the entire 1996 General category season. Results were mixed; quota was available for the General category to remain open later in the season, but only for a few days, and under ''derby'' fishing conditions (high

effort and landings concentrated in a short time period).

Based on the experience of the 1995 and 1996 seasons, NMFS has received several suggestions regarding the 1997 ABT General category season. Some constituents have requested a split season, with a certain percentage of the quota reserved for after September 1. Other constituents have argued against a split season, stating that the fishery should open June 1, and continue to be open each day until the entire General category quota is harvested. NMFS has also received many suggestions regarding the use of restricted fishing days. The suggestions have ranged from eliminating restricted fishing days entirely, to having every other day a restricted fishing day. Some have also expressed the opinion that if there are to be restricted fishing days, they should conform to market closures in Japan (the major export market).

Proposed Quota Subdivision

NMFS is concerned that maintaining the General category season beyond mid-July with no effort control measures in place would increase the likelihood of a premature closure in the second half of the season. Given the potential for an increased pace of landings in August, this could possibly result in severely curtailed fishing in September, with adverse consequences for scientific monitoring, the geographical distribution of the quota, and prices.

Therefore, NMFS proposes to adjust the time period subquotas of the General category quota in 1997. Based upon historical catch patterns (1983–96), the General category quota is proposed to be split into three subquotas and distributed as follows: 60 percent for June-August, 30 percent for September, and 10 percent for October-December. These percentages would be applied only to the coastwide General category quota of 623 metric tons, with the remaining 10 mt being reserved for the New York Bight fishery in October. Thus, of the 623 mt total, 374 mt would be available in the period beginning June 1 and ending August 31 (first period), 187 mt would be available in the period beginning September 1 and ending September 30 (second period), and 72 mt (including the 10 mt for the New York Bight fishery) would be available in the period beginning October 1 and ending December 31 (third period). When the third period General category catch is projected to have reached 62 mt, NMFS will set aside the remaining 10 mt for the New York Bight only. Upon the effective date of the New York Bight set-aside, fishing for, retaining, or landing large medium or giant ABT is prohibited in all waters outside the set-aside area.

Attainment of subquota in any fishing period would result in a closure until the beginning of the following fishing period, whereupon any underharvest or overharvest would be carried over to the following period, with the subquota for the following period adjusted accordingly. Inseason closures would be filed with the Office of the Federal Register, stating the effective date of closure, and announced through the Highly Migratory Species (HMS) Fax Network, the HMS Information Line, NOAA weather radio, and Coast Guard Notice to Mariners. Although notice of closure will be provided as far in advance as possible, fishermen are encouraged to call the HMS Information Line to check the status of the fishery before leaving for a fishing trip. The phone numbers for the HMS Information Line are (301) 713–1279 and (508) 281–9305. Information regarding the Atlantic tuna fisheries is also available through Nextlink Interactive, Inc. at (888) USA-TUNA.

The New York Bight area has most recently been defined as the area comprising the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72°27' W. long. (Shinnecock Inlet) and running SSE 150° true. In recent years NMFS has received comments on the definition of the New York Bight area and on the need for a southern boundary to the New York Bight area in order to limit end-of-the-season General category fishing activity to the Mud Hole region. In 1995, NMFS addressed concerns about participation in the Mud Hole fishery by Montauk vessels and defined the set-aside area to originate at Shinnecock Inlet, as opposed to Moriches Inlet in prior years. NMFS requests comment on the definition of the New York Bight area, the need for a southern boundary, and the specific placement of the boundary line should it be established.

Proposed Effort Controls

NMFS also proposes to change the restricted fishing days for vessels permitted in the General category. In 1996, the restricted fishing days followed the pattern of Sunday, Monday, and Tuesday (with some exceptions for market closures and holidays) from mid-July to mid-September. Consecutive restricted fishing days in 1995 and 1996 did not appear to lengthen the fishing season significantly. Additionally, while there may be market advantages to a system in which every other day is a restricted fishing day, such a schedule could result in enforcement problems, as well as possible difficulties for fishermen who would be forced to return to port each day. Therefore, after evaluating proposals received from associations representing General category fishermen and dealers for mutually agreeable restricted fishing days, NMFS proposes the following restricted fishing days for the 1997 season: July 16, 17, 23, and 30; and August 6, 10, 11, 12, 17, 20, 24, and 27. These proposed restricted fishing days would improve distribution of fishing opportunities without increasing ABT mortality.

In a separate action, NMFS has prohibited fishing (including tag and release fishing) for ABT of all sizes by persons aboard vessels permitted in the General category on designated ABT restricted fishing days (62 FR 30741, June 5, 1997). Persons aboard vessels permitted in the Charter/Headboat category may fish for only school, large school, and small medium ABT on designated restricted fishing days.

Classification

This proposed rule is published under the authority of ATCA, 16 U.S.C. 971 *et seq*. Preliminarily, the AA has determined that the regulations contained in this proposed rule are necessary for management of the Atlantic tuna fisheries.

NMFS prepared a draft EA for this proposed rule with a preliminary finding of no significant impact on the human environment. In addition, a draft RIR was prepared with a preliminary finding of no significant impact. The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Because many of the designated restricted fishing days have been scheduled to correspond directly to Japanese market closures, the likelihood of extending the fishing season is increased and additional revenues may accrue to small businesses as market prices received by U.S. fishermen are improved. Thus, an Initial Regulatory Flexibility Analysis was not prepared.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

NMFS reinitiated consultation on the Atlantic tuna fishery under section 7 of the Endangered Species Act on September 25, 1996. This consultation considered new information concerning the status of the northern right whale. On May 29, 1997, NMFS issued a

biological opinion, which concluded that: Continued operation of the longline and purse seine component may adversely affect but is not likely to jeopardize the continued existence of any endangered or threatened species under NMFS jurisdiction, and continued operation of the hand gear fisheries is not likely to adversely affect the continued existence of any endangered or threatened species under NMFS jurisdiction. NMFS has determined that proceeding with this proposed rule would not result in any irreversible and irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures to reduce adverse impacts on protected resources. This proposed rule implements restricted fishing days and therefore would not likely increase fishing effort nor shift activities to new fishing areas. Therefore, the proposed rule is not expected to increase endangered species or marine mammal interaction rates.

Dated: June 30, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 285 is proposed to be amended as follows:

PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

2. In § 285.22, paragraph (a)(1) is revised to read as follows:

§ 285.22 Quotas.

* * * * *

(a) *General.* (1) The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by vessels permitted in the General category under § 285.21(b) is 633, of which 374 mt are available in the period beginning June 1 and ending August 31; 187 mt are available in the period beginning September 1 and ending September 30; and 72 mt are available in the period beginning October 1.

* * * * *

3. In § 285.24, paragraph (a)(1) is revised to read as follows:

§ 285.24 Catch limits.

(a) *General category*. (1) From the start of each fishing year, except on designated restricted fishing days, only one large medium or giant Atlantic bluefin tuna may be caught and landed per day from a vessel for which a General category permit has been issued under this part. On designated restricted fishing days, persons aboard such vessels may not fish for, possess or retain Atlantic bluefin tuna. For calendar year 1997, designated restricted fishing days are: July 16, 17, 23, and 30; and August 6, 10, 11, 12, 17, 20, 24, and 27.

* * * * *

[FR Doc. 97–17534 Filed 6–30–97; 4:55 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 128
Thursday, July 3, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Tulpehocken Creek Watershed, Pennsylvania

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR, Part 1500); and the Natural Resources Conservation Service (formerly the Soil Conservation Service) Guidelines (7 CFR, Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Tulpehocken Creek Watershed, Berks and Lebanon Counties, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Ms. Janet L. Oertly, State Conservationist, Natural Resources Conservation Service, Suite 340, One Credit Union Place, Harrisburg, Pennsylvania 17110–2993, telephone (717) 782–2202.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally-assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Janet L. Oertly, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project concerns a plan for watershed protection, water quality improvement and aquatic habitat improvement. The planned works of improvement involve extensive accelerated land treatment, the acquisition of conservation easements and stream habitat improvement. Land treatment measures include agricultural waste management systems; erosion and sediment control on cropland; restoration of wetlands; establishment of riparian forest buffers and filter strips; and stabilization of severely eroding streambanks. Conservation easements include perpetual floodplain and wetland easements.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. A limited number of copies of the FONSI are available to fill single copy requests at the above address. The environmental assessment and basic data may be reviewed by contacting Janet L. Oertly.

No administrative action on implementation of the proposal will be taken until thirty (30) days after the date of this publication in the Federal Register.

(This activity is listed in the Catalog of Federal Domestic Assistance Program No. 10.904—Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Janet L. Oertly,

State conservationist.

[FR Doc. 97–17496 Filed 7–2–97; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, July 11, 1997, 8:00 a.m.

PLACE: U.S. Commission on Civil Rights 624 Ninth Street, N.W., Room 540 Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of June 13, 1997
III. Announcements
IV. Staff Report
V. Executive Session
VI. State Advisory Committee Appointments for Florida, Georgia, Indiana, Louisiana, Maine (interim), Tennessee, and Virginia
VII. Equal Educational Opportunity Reports
VII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 97–17600 Filed 7–1–97; 12:08 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 898]

Expansion of Foreign-Trade Zone 43 Battle Creek, Michigan Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the City of Battle Creek, Michigan, grantee of Foreign-Trade Zone No. 43, for authority to expand its general-purpose zone to include a site at the facilities of Honee Bear Division, Packers Canning, Inc., Lawton (Van Buren County), Michigan, adjacent to the Battle Creek Customs port of entry, was filed by the Foreign-Trade Zones (FTZ) Board on May 20, 1996 (Docket 42–96, 61 FR 27047, 5/30/96);

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board has found that the requirements of the Act and the regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The grantee is authorized to expand its zone as requested in the application, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 20th day of June 1997.

Jeffrey P. Bialos

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary .

[FR Doc. 97–17393 Filed 7–2–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 897]

Expansion of Foreign-Trade Zone 43 Battle Creek, Michigan Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the City of Battle Creek, Michigan, grantee of Foreign-Trade Zone No. 43, for authority to expand its general-purpose zone to include a site at the St. Joseph River Harbor Development Area, Benton Harbor (Berrien County), Michigan, adjacent to the Battle Creek Customs port of entry, was filed by the Foreign-Trade Zones (FTZ) Board on May 7, 1996 (Docket 37–96, 61 FR 25190, 5/20/96);

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board has found that the requirements of the Act and the regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The grantee is authorized to expand its zone as requested in the application, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 20th day of Jine 1997.

Jeffrey P. Bialos.

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–17394 Filed 7–2–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 902]

Expansion of Foreign-Trade Zone 181; Akron-Canton, Ohio

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Akron-Canton Regional Airport Authority, grantee of Foreign-Trade Zone 181, for authority to expand Foreign-Trade Zone 181 to include sites in Trumbull, Columbiana and Stark Counties, Ohio, was filed by the Board on July 8, 1996 (FTZ Docket 56–96, 61 FR 37442, 7/18/96); and,

Whereas, notice inviting public comment was given in **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 181 is approved, subject to the Act and the Board's regulations, including Section 400.28, and subject to the standard 2,000-acre activation limit.

Signed at Washington, DC, this 20th day of June 1997.

Jeffrey P. Bialos,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–17396 Filed 7–2–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 900]

Approval For Manufacturing Authority; Quoizel, Inc. (Lighting Fixtures); Within Foreign-Trade Zone 21; Charleston, South Carolina

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u)(the Act), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, § 400.28(a)(2) of the Board's regulations, requires approval of the Board prior to commencement of new manufacturing/processing activity within existing zone facilities;

Whereas, the South Carolina State Ports Authority, grantee of FTZ 21, has requested authority under § 400.28(a)(2) of the Board's regulations on behalf of Quoizel, Inc., to manufacture lighting fixtures under zone procedures within FTZ 21, Charleston, South Carolina (filed 5–8–96; FTZ Doc. 38–96, 61 FR 25190, 5–20–96); and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied and that the proposal is in the public interest;

Now, Therefore, the Board hereby approves the request subject to the Act and the Board's regulations, including § 400.28, for a five-year period (until 12–31–02), subject to extension upon review.

Signed at Washington, DC, this 20th day of June 1997.

Jeffrey P. Bialos,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.

Executive Secretary.

[FR Doc. 97–17392 Filed 7–2–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 905]

Expansion of Foreign-Trade Zone 21, Charleston, South Carolina, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the South Carolina State Ports Authority, grantee of Foreign-Trade Zone 21, Charleston, South Carolina, area, for authority to expand FTZ 21—Site 8 at Wando Park in Mount Pleasant, South Carolina, was filed by the Board on August 9, 1996 (FTZ Docket 62–96, 61 FR 43229, 8/21/96);

Whereas, notice inviting public comment was given in **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 21—Site 8 is approved, subject to the Act and the Board's regulations, including Section 400.28, and subject to the standard 2,000-acre activation limit for the overall zone project.

Signed at Washington, DC, this 20th day of June 1997.

Jeffrey P. Bialos,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–17395 Filed 7–2–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–559–001]

Certain Refrigeration Compressors From the Republic of Singapore: Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration/ Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On August 29, 1996, the Department of Commerce published the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore.

In our preliminary results of review, we preliminarily determined that the signatories to the suspension agreement complied with the terms of the suspension agreement during the period of review. We gave interested parties an opportunity to comment on our preliminary results.

We have now completed this review, the twelfth review of this Agreement, and determine that the Government of the Republic of Singapore (GOS), Matsushita Refrigeration Industries (Singapore) Pte. Ltd. (MARIS), and Asia Matsushita Electric (Singapore) Pte. Ltd. (AMS), the signatories to the suspension agreement, have complied with the terms of the suspension agreement during the period April 1, 1994 through March 31, 1995. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: July 3, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Jean Kemp, Office of AD/CVD Enforcement, Group III, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Applicable Statutes and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on or after January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Tariff Act) in accordance with the Uruguay Round Agreements Act (URAA).

Background

On August 29, 1996, the Department of Commerce (the Department) published in the **Federal Register** (61 FR 45402–04) the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore (48 FR 51167, November 7, 1983). We received comments from interested parties on our preliminary results. Also, the Department sent out supplemental questionnaires on December 10, 1996 and January 14, 1997, to obtain additional information on the Finance and Treasury Center (FTC) program. Petitioner provided comments to respondents' supplemental questionnaires on January 8 and February 5, 1997. We have now completed this administrative review in accordance with section 751 of the Tariff Act of 1930.

Scope of the Review

Imports covered by this review are shipments of hermetic refrigeration compressors rated not over one-quarter horsepower from Singapore. This merchandise is currently classified under *Harmonized Tariff Schedule* (HTS) item number 8414.30.40. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period April 1, 1994 through March 31, 1995, and includes three programs. The review covers one producer and one exporter of the subject merchandise, MARIS and AMS, respectively. These two companies, along with the GOS, are the signatories to the suspension agreement.

Under the terms of the suspension agreement, the GOS agrees to offset completely the amount of the net bounty or grant (subsidy) determined by the Department in this proceeding to exist with respect to the subject merchandise. The offset entails the collection by the GOS of an export charge applicable to the subject merchandise exported on or after the effective date of the agreement. *See Certain Refrigeration Compressors from the Republic of Singapore: Suspension of Countervailing Duty Investigation*, 48 FR 51167, 51170 (November 7, 1983).

Analysis of Comments Received

We preliminarily determined that the signatories to the suspension agreement complied with the terms of the suspension agreement during the period of review (POR). We invited interested parties to comment on the preliminary results. We received comments from the respondents, MARIS and AMS, and the petitioner, Tecumseh Products Company.

Respondents argue that the FTC program is not countervailable for three reasons: (1) it is associated only with services, not goods; (2) its benefits are ''tied'' to the provision of financial services to entities outside Singapore and therefore the subsidy does not benefit subject merchandise; and (3) it is not specific. We address each of these arguments as separate comments below.

Comment 1: Respondents state that only services provided to offshore companies can receive preferential tax treatment under the FTC program. Because the FTC program is tied to these services, they argue, it is not possible for the subject merchandise to receive countervailable benefits from AMS's FTC program. Respondents note that the FTC program approval letter authorizing AMS to be taxed at a concessionary rate on profits from the provision of these services states that ''the qualifying network companies shall be the subsidiaries, branches, associates or related companies outside Singapore,'' which have received approval from the proper authority in Singapore for the purposes of the FTC incentive.

Respondents argue that the GOS stated in its questionnaire response that ''the tax benefits of the program explicitly do not, by law and under the terms of AMS' FTC approval, benefit either MARIS or the subject merchandise.'' Respondents note that the Department has found in previous cases that where a company receives a grant on terms that prevent any benefit from flowing to the subject merchandise, the program does not provide a countervailable benefit. *See Live Swine from Canada, Preliminary Results of Countervailing Duty Administrative Review;* 61 FR 26879 (May 29, 1996). Also, respondents point out that the Department determined that equity infusions which were made to VEW, a related company that did not produce subject merchandise, were specifically tied by law to VEW, and

hence could not benefit the subject merchandise. *See, Certain Carbon Steel Products from Austria, Final Determination* (''*Austrian Steel*); 50 FR 33369 (August 19, 1985). Lastly, respondents state that the Department determined that where the ''export subsidies are explicitly tied to non-subject merchandise (*i.e.*, export to third countries), * * * the subsidies do not benefit subject merchandise,'' and hence are not countervailable. *See Roses and Other Cut Flowers from Colombia: Miniature Carnations from Colombia, Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations* (''*Flowers*''), 61 FR 45941 (August 30, 1996).

Petitioner argues that the tax savings received by AMS are not ''tied'' to FTC centers, but rather accrue to the company as a whole and thus to all goods manufactured, produced or exported by the company. Petitioner argues that the Department's treatment of the FTC program (*i.e.*, tax relief) is similar to a grant program countervailed in *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom, Final Results,* 60 FR 54841 (October 26, 1995). In that case, the Department stated that ''the grants benefit the entire operations of the company and are appropriately allocated to total sales of the company.'' 60 FR at 54841. Additionally, petitioner states that the administrative decisions cited by respondents are inapplicable to this case. For example, *Live Swine from Canada* involved ''interest-free cash advances on loans'' that are made pursuant to legislation that ''specifically state[s] that the advances are to be used for crops that are sold, not used on the farm.'' Petitioner states that this arrangement tied benefits to specific products, whereas the savings from the FTC's program's concessionary tax rate flow to the company and all its products. Although the Department rejected a claim in *Austrian Steel* that a specifically tied subsidy program should be countervailed against the company as a whole, the FTC program, petitioner claims, is not a specifically tied program. Petitioner maintains that benefits received by AMS (*i.e.*, increased net income) are not specifically tied by law, but accrue to the entire company. Finally, petitioner argues that *Flowers* is also inapplicable to this case. In *Flowers,* petitioner notes, the Department did not allocate tied benefits across the subject company's total sales; in this case, petitioner claims, the benefits are untied, and therefore do accrue to the entire company. Thus, petitioner asserts that the Department correctly applied its methodology and allocated the benefit received by AMS to that company's total sales.

Department's Position: The information on the record does not support a finding that the preferential tax treatment authorized for certain services performed by AMS' FTC bestows a countervailable benefit on the production or exportation of the subject merchandise. The Singapore Income Tax Act, Section 43G (Singaporean law) specifies that an ''FTC may provide qualifying activities carried out on its own account as may be prescribed or such prescribed qualifying services as may be provided to its offices and associated companies where such offices and associated companies are outside of Singapore.'' All of the affiliated parties which qualified for these services were located outside of Singapore. Furthermore, the record indicates that: (1) Singaporean law does not permit AMS to claim preferential tax treatment on financial transactions for entities located in Singapore; (2) under the Singaporean Income Tax Code, it would be tax fraud if AMS attempted to take a tax benefit for an unqualified transaction involving the subject merchandise; and (3) the GOS does not permit preferential tax treatment under the FTC program for any activities conducted with regard to the sale, production, or export of the subject merchandise or any merchandise produced in Singapore.

Because preferential tax treatment under the FTC program is provided solely for income derived from financial services performed for affiliated companies located outside of Singapore, and because these types of financial services for which preferential tax treatment can be claimed are not the types of services applicable to the production or sale of merchandise, there is no basis for determining that the preferential tax treatment of FTC income bestows a countervailable subsidy on the subject merchandise.

Petitioner's claim, that the benefits from the FTC tax program are not tied to FTC centers, is based on the theory that any tax savings accrue to the company as a whole, and thus, in part, to subject merchandise. Petitioner appears to be arguing that a subsidy provided to certain specified service activities of a firm, as opposed to certain specified production activities of a firm, must always be attributed to the merchandise produced and sold by a firm, and must, therefore always be countervailed.

We do not disagree with petitioner that there are financial services that are undertaken during the course of producing and selling merchandise (such as financing of input purchases, financing of sales, financing the purchase of capital equipment among many others). Specific benefits bestowed for the performance of these types of services could certainly be attributed to production and sales of merchandise. However, as noted above, the concessionary tax rate authorized for AMS's FTC income does not include preferential tax treatment of financial services with respect to production or sale of merchandise produced in Singapore. Because the GOS does not allow preferential tax treatment of any AMS' FTC services provided in connection with companies producing or selling merchandise in Singapore, we find that the FTC program does not confer a countervailable subsidy on the production or export of subject merchandise.

Comment 2: Respondents argue that the suspension agreement, U.S. law, and the WTO Agreements all provide that countervailing duties only may be imposed with regard to goods, and not services, and that thus the FTC program is not countervailable because it pertains to services, and not manufactured goods.

Petitioner argues that the statute requires the Department to countervail benefits received by a company in the form of reduced taxation, without regard to whether those benefits are provided for production. Thus, petitioner asserts, current U.S. law allows the Department to countervail benefits such as those conferred by the FTC program. Therefore, petitioners argue, the Department can countervail tax savings AMS derives from its income received from the FTC program.

Department's Position: We agree that benefits associated with certain financial services may bestow a countervailable subsidy on subject merchandise under certain conditions. However, in this case, there is no countervailable benefit on subject merchandise, as explained in the *Department's Position* on *Comment 1* above.

Comment 3: Respondents argue that the Department should revisit its earlier determination regarding the specificity of the FTC program and find the program not specific based on the greater number of companies receiving tax benefits under the FTC program in the tenth review, on the extent of diversification of economic activities within the jurisdiction of the authority providing the subsidy, and the length of time during which the subsidy program has been in operation.

Petitioner cites section 1677(5A) of the Act and section 355.43(b) of the Department's proposed regulations, and affirms that the FTC program is specific and countervailable by virtue of being used by what is still a limited number of companies and industries.

Department's Position: The Department previously found benefits from the FTC program to be specifically provided. *See, Certain Refrigeration Compressors from the Republic of Singapore; Final Results of Countervailing Duty Administrative Review,* 61 FR 10315 (March 13, 1996) and *Certain Refrigeration Compressors from the Republic of Singapore; Final Results of Countervailing Duty Administrative Review,* 61 FR 44296 (August 28, 1996). However, because we have found that the program does not bestow a countervailable subsidy on the subject merchandise, we need not address the comments on specificity raised by respondents and petitioner in this review. Please see *Department's Position* on *Comment 1* above.

Final Results of Review

We determine that the signatories to the suspension agreement have complied with the terms of the suspension agreement, including the payment of the provisional export charge for the review period. From April 1, 1994, through March 31, 1995, a rate of 5.52 percent was in effect.

We determine the net subsidy to be 1.80 percent of the f.o.b. value of the merchandise for the April 1, 1994 through March 31, 1995 review period. Following the methodology outlined in section B.4 of the agreement, the Department determines that, for the period of review, a negative adjustment may be made to the provisional export charge rate in effect. The adjustment will equal the difference between the provisional rate in effect during the review period and the rate determined in this review, plus interest. For this period the GOS may refund or credit, in accordance with section B.4.c of the agreement, the difference to the companies, plus interest, calculated in accordance with section 778(b) of the Tariff Act.

The Department intends to notify the GOS that the provisional export charge rate on all exports of the subject merchandise to the United States with Outward Declarations filed on or after the date of publication of the final results of this administrative review shall be 1.80 percent of the f.o.b. value of the merchandise.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 355.22 of the Department's regulations (19 CFR 355.22(1994)).

Dated: June 25, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–17397 Filed 7–2–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Fire Codes: Request for Proposals for Revision of Codes and Standards

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of request for proposals.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its fire safety codes and standards and requests proposals from the public to amend existing NFPA fire safety codes and standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its codes and standards.

The publication of this notice of request for proposals by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service. NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESSES: Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–9101.

FOR FURTHER INFORMATION CONTACT: Casey C. Grant, Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops fire safety codes and standards which are known collectively as the National Fire Codes. Federal agencies frequently use these codes and standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the **Federal Register** approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Request for Proposals

Interested persons may submit amendments, supported by written data, views, or arguments to Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–9101. Proposals should be submitted on forms available from the NFPA Codes and Standards Administration Office.

Each person must include his or her name and address, identify the document and give reasons for the proposal. Proposals received before or by 5:00 PM local time on the closing date indicated will be acted on by the Committee. The NFPA will consider any proposal that it receives on or before the date listed with the codes or standard.

At a later date, each NFPA Technical Committee will issue a report which will include a copy of written proposals that have been received and an account of their disposition of each proposal by the NFPA Committee as the Report on Proposals. Each person who has submitted a written proposal will receive a copy of the report.

Authority: 15 U.S.G. 272.

Dated: June 26, 1997.

Elaine Bunten-Mines,

Director, Program Office.

NFPA No.	Title	Proposal closing date
NFPA 11A–1994	Medium- and High-Expansion Foam Systems	8/1/97
NFPA 13–1996	Installation of Sprinkler Systems	1/2/98
NFPA 13D–1996	Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes.	1/2/98

NFPA No.	Title	Proposal closing date
NFPA 14–1996	Installation of Standpipe and Hose Systems	1/2/987
NFPA 16–1995	Installation of Deluge Foam-Water Sprinkler and Foam-Water Spray Systems.	7/18/97
NFPA 16A–1994	Installation of Closed-Head Foam-Water Sprinkler Systems	7/18/97
NFPA 30–1996	Flammable and Combustible Liquids Code	8/1/97
NFPA 30A–1996	Atuomotive and Marine Service Station Code	8/1/97
NFPA 32–1996	Drycleaning Plants	1/2/98
NFPA 33–1995	Spray Application Using Flammable or Combustible Materials	12/5/97
NFPA 34–1995	Dipping and Coating Processes Using Flammable or Combustible Liquids.	12/5/97
NFPA 49–1994	Hazardous Chemicals Data	9/2/97
NFPA 50A–1994	Gaseous Hydrogen Systems at Consumer Sites	9/2/97
NFPA 50B–1994	Liquefied Hydrogen Systems at Consumer Sites	9/2/97
NFPA 51B–1994	Cutting and Welding Processes	7/18/97
NFPA 54–1996	National Fuel Gas Code	1/2/98
NFPA 57–1996	Liquefied Natural Gas (LNG) Vehicular Fuel Systems	1/2/98
NFPA 59A–1996	Liquefied Natural Gas (LNG)	1/2/98
NFPA 61–1995	Fires and Dust Explosions in Agricultural and Food Products Facilities	1/2/98
NFPA 70E–1995	Electrical Safety Requirements for Employee Workplaces	7/3/98
NFPA 72–1996	National Fire Alarm Code	11/14/97
NFPA 75–1995	Electronic Computer/Data Processing Equipment	7/18/97
NFPA 77–1993	Static Electricity	12/5/97
NFPA 82–1994	Incinerators and Waste and Linen Handling Systems and Equipment	7/18/97
NFPA 86–1995	Ovens and Furnaces	1/2/98
NFPA 86C–1995	Industrial Furnaces Using a Special Processing Atmosphere	1/2/98
NFPA 86D–1995	Industrial Furnaces Using Vacuum as an Atmosphere	1/2/98
NFPA 91–1995	Exhaust Systems for Air Conveying Materials	7/18/97
NFPA 92A–1996	Smoke-Control Systems	1/2/98
NFPA 92B–1995	Smoke Management Systems in Malls, Atria, and Large Areas	1/2/98
NFPA 101–1997	Safety to Life from Fire in Buildings and Structures	4/3/98
NFPA 102–1995	Grandstands, Folding and Telescopic Seating, Tents, and Membrane Structures.	4/3/98
NFPA 120–1994	Coal Preparation Plants	7/18/97
NFPA 123–1995	Underground Bituminous Coal Mines	7/18/97
NFPA 220–1995	Types of Building Construction	1/2/98
NFPA 251–1995	Fire Endurance of Building Construction and Materials	7/3/98
NFPA 252–1995	Fire Tests of Door Assemblies	9/2/97
NFPA 253–1995	Critical Radiant Flux of Floor Covering Systems Using a Radiant Heat Energy Source.	7/3/98
NFPA 255–1996	Surface Burning Characteristics of Building Materials	7/3/98
NFPA 257–1996	Fire Test for Window and Glass Block Assemblies	7/3/98
NFPA 269–1996	Toxic Potency Data for Use in Fire Hazard Modeling	7/3/98
NFPA 297–1995	Principles and Practices for Communications Systems	1/2/98
NFPA 325–1994	Fire Hazard Properties of Flammable Liquids, Gases, and Volatile Solids.	9/2/97
NFPA 326–1993	Underground Storage Tanks	1/2/98
NFPA 327–1993	Cleaning or Safeguarding Small Tanks and Containers Without Entry	1/2/98
NFPA 328–1992	Flammable and Combustible Liquids and Gases in Manholes, Sewers, and Similar Underground Structures.	1/2/98
NFPA 329–1992	Underground Releases of Flammable and Combustible Liquids	1/2/98
NFPA 501C–1996	Recreational Vehicles	7/18/97
NFPA 501D–1996	Recreational Vehicle Parks and Campgrounds	9/5/97
NFPA 520–P*	Subterranean Space	7/18/97
NFPA 655–1993	Sulfur Fires and Explosions	7/18/97
NFPA 701–1996	Fire Tests for Flame-Resistant Textiles and Films	7/18/97
NFPA 721–P*	Fuel Gas Warning Equipment	8/14/98
NFPA 750–1996	Water Mist Fire Protection Systems	1/2/98
NFPA 850–1996	Fire Protection for Electric Generating Plants and High Voltage Direct Current Converter Stations.	7/3/98
NFPA 851–1996	Hydroelectric Generating Plants	7/3/98
NFPA 1221–1994	Public Fire Service Communication Systems	1/2/98
NFPA 1231–1993	Water Supplies for Suburban and Rural Fire Fighting	1/2/98
NFPA 1470–1994	Search and Rescue Training for Structural Collapse Incidents	7/18/97
NFPA 1670–P*	Operations and Training for Technical Rescue Incidents	7/18/97
NFPA 1901–1996	Automotive Fire Apparatus	1/2/98
NFPA 1936–P*	Hydraulic Powered Rescue Tools	1/2/98
NFPA 1971–1997	Protective Ensemble for Structural Fire Fighting	1/2/98
NFPA 1976–1992	Protective Clothing for Proximity Fire Fighting	1/2/98
NFPA 1983–1995	Fire Service Life Safety Rope and System Components	1/2/98
NFPA 2001–1996	Clean Agent Fire Extinguishing Systems	1/2/98
NFPA 8502–1995	Furnace Explosions/Implosions in Multiple Burner Boilers	7/18/97

*P Proposed NEW drafts are available from the NFPA Codes and Standards Administration, 1 Batterymarch Park, Quincy, MA 02269.

[FR Doc. 97–17445 Filed 7–2–97; 8:45 am]
BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062097A]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council will hold a meeting of its Precious Corals Plan Team.

DATES: The meeting will be held on July 29, 1997, from 1:00 p.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Hawaii Department of Land and Natural Resources, 1151 Punchbowl, Rm. 132, Honolulu, HI; telephone: (808) 522–8224.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The Council's Precious Corals Plan Team will hold a meeting to discuss state and Federal permits for American Deepwater Engineering; the consistency of state and Federal regulations for harvesting precious corals in Hawaii; and a draft amendment to the Council's Precious Corals Fishery Management Plan that would establish a framework process for established management measures, including quotas and gear restrictions.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: June 23, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–17420 Filed 7-2-97; 8:45 am]
BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062397B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application for a scientific research permit (P649).

SUMMARY: Notice is hereby given that Rick Golden, a fishery biologist employed by the Umpqua National Forest at Idleyld Park, OR, has applied in due form for a permit that would authorize a take of an endangered species for scientific research.

DATES: Written comments or requests for a public hearing on this application must be received on or before August 4, 1997.

ADDRESSES: The application and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Protected Resources Division, F/NWO3, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Written comments or requests for a public hearing should be submitted to the Chief, Protected Resources Division, Portland.

SUPPLEMENTARY INFORMATION: Rick Golden requests a permit under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

Rick Golden (P649) requests a 3-year permit for an annual take of adult and juvenile, endangered, Umpqua River cutthroat trout (*Oncorhynchus clarki clarki*) associated with research designed to determine whether the fish is present in the Fish Creek watershed. Fish Creek is a tributary of the upper North Umpqua River in southwest Oregon. Anecdotal evidence suggests that anadromous cutthroat trout were historically, and may still be present in the Fish Creek watershed. The primary reason for determining the presence/absence of resident cutthroat trout in the Fish Creek Basin is to clarify the degree of impact that projected timber harvests in the basin would have on ESA-listed cutthroat trout. The research also has significance in ongoing discussions on whether fish passage facilities should be constructed at Soda Springs Dam. In addition, knowledge of the presence of resident cutthroat trout in Fish Creek above Soda Springs Dam, and information concerning the size and distribution of that population, will be useful to NMFS in designating critical habitat and designing a recovery plan for the ESA-listed fish. Rick Golden proposes to observe ESA-listed fish by snorkeling and to capture and handle ESA-listed fish using electroshocking. An indirect mortality of ESA-listed fish associated with the research is also requested.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on this application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: June 24, 1997.

Nancy Chu,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–17421 Filed 7–2–97; 8:45 am]
BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062697A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of scientific research permit no. 859–1373.

SUMMARY: Notice is hereby given that the United States Air Force, 30th Space Wing, Vandenberg Air Force Base (VAFB), California 93437–5320, is hereby authorized to take California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina richardsi*), and northern elephant seals (*Mirounga angustirostris*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS,

1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4001).

SUPPLEMENTARY INFORMATION: On May 5, 1997, notice was published in the **Federal Register** (62 FR 24422) that the above-named applicant had submitted a request for a scientific research permit to capture, chemically sedate/immobilize, measure auditory brainstem response, take blood samples, flipper tag, attach telemetry instruments, and recapture capture, and unintentionally harass California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina richardsi*), and northern elephant seals (*Mirounga angustirostris*) in order to determine the effects of noise from rocket launches and sonic booms. Activities are to be conducted over a 5-year period in the vicinity of VAFB and the Northern Channel Islands. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

Dated: June 26, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–17419 Filed 7–2–97; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Registration Actions by National Futures Association With Respect to Floor Brokers, Floor Traders and Applicants for Registration in Either Category

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and order.

SUMMARY: The Commodity Futures Trading Commission (Commission) is authorizing National Futures Association (NFA) to grant the registration of any applicant for registration as a floor broker (FB) or floor trader (FT) or to maintain the registration of any registered FB or FT who may be subject to statutory disqualification from registration without forwarding such cases to the Commission for review. The Commission previously had directed NFA to stay the granting of registration and provide the Commission with the opportunity to object to such granting of registration where an applicant for FB or FT registration has a disciplinary history including a potential statutory disqualification from registration, but NFA determined that registration should be granted, either with or without conditions. The Commission also had directed NFA to provide the Commission with the opportunity to object to maintaining the registration of a registered FB or FT with certain new disciplinary history. This Order conforms NFA's authority regarding the FB and FT registration categories to the authority delegated by the Commission to NFA concerning the other categories of registration under the Commodity Exchange Act (Act).[1]

EFFECTIVE DATE: July 3, 1997.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel; Robert P. Shiner, Assistant Director; or Natalie A. Markman, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5450.

SUPPLEMENTARY INFORMATION:

Introduction

The Commission previously has issued Orders authorizing NFA to perform registration processing functions with respect to FBs and FTs, including: (1) Processing and, where appropriate, granting applications for registration under the Act; (2) issuing and terminating, where appropriate, temporary licenses; (3) processing the triennial review of registration information, periodic updates, terminations of trading privileges and requests for withdrawal from registration; (4) establishing and maintaining systems of records regarding FBs and FTs and serving as the official custodian of those Commission records; and (5) denying, conditioning, suspending, modifying, restricting or revoking the registration of any FB, FT or applicant for registration in either category.[2] However, the Commission has not previously authorized NFA to take action without Commission review that would either: (1) Grant registration, with or without conditions, with respect to an application for registration as an FB or an FT where the applicant's disciplinary history includes a potential statutory disqualification[3] from registration[4] or (2) maintain registration, either with or without restrictions, with respect to a registered FB or FT with new disciplinary history.[5] The Commission noted in its Order published on August 1, 1994 that the referral of these registration matters by NFA to the Commission was only a ''temporary requirement.''[6] By the Order below issued on this date, the Commission is conforming NFA's authority concerning the FB and FT registration categories to the authority delegated by the Commission to NFA concerning the other categories of registration under the Act.[7] However, the Commission will continue to handle any matter that already has been referred to it by NFA. The Commission also will continue to accept or act upon requests for exemption and render ''no-action'' opinions with respect to applicable registration requirements.

As recommended by the Commission in its February 1996 review of NFA's registration fitness program, NFA will provide the Commission with quarterly schedules of all applicants cleared for registration and all registrants whose

[1] 7 U.S.C. 1 *et seq.* (1994).

[2] 51 FR 25929 (July 7, 1986); 51 FR 34490 (September 29, 1986); 58 FR 19657 (April 15, 1993); 59 FR 38957 (August 1, 1994).

[3] The grounds for statutory disqualification are set forth in Sections 8a (2), (3) and (4) of the Act.

[4] When the Commission issued its most recent delegation Order, it noted that:

[U]nless the Commission orders otherwise * * * if NFA determines that registration should be granted in such a case, either with or without conditions, NFA shall transmit the file to the Commission and stay the granting of registration until the Commission has had an opportunity to object to such granting of registration. 59 FR 38957, 38958 (footnote omitted).

See also id. at 38959 n.11.

[5] The Commission noted that:

NFA need not * * * forward to the Commission any matter related to an FB, FT or applicant for registration in either category where the only ''yes'' answer to a disciplinary history question relates to a single arrest where there was no subsequent conviction, guilty plea or plea of nolo contendere, or a single misdemeanor conviction based on conduct unrelated to financial market activity that predates the application for registration by at least five years, provided such matter is disclosed on the registration application or any update thereto. If a person willfully makes any materially false or misleading statement or omits to state any material fact in his registration application or any update thereto, that is a separate ground for statutory disqualification from registration. 7 U.S.C. 12a(2)(G) and 12a(3)(G) (1994).

[6] 59 FR 38957, 38958 (footnote omitted).

[7] The Commission previously has authorized NFA to perform registration processing functions, and to take adverse registration actions, with respect to futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, leverage transactions merchants and associated persons of such entities, as well as applicants for registration in any of the aforementioned categories. *See* 48 FR 15940 (April 13, 1983); 48 FR 35158 (August 3, 1983); 48 FR 51809 (November 14, 1983); 49 FR 8226 (March 5, 1984); 49 FR 39593 (October 9, 1984); 50 FR 34885 (August 28, 1985); 54 FR 19594 (May 8, 1989); and 54 FR 41133 (October 5, 1989).

registration is maintained without adverse action by NFA's Registration, Compliance, Legal Committee despite potential statutory disqualifications. In order to ensure appropriate oversight, the Commission will review the schedules to determine whether it should provide further guidance to NFA on particular issues regarding registration in any of the Commission's registration categories. In addition, the Commission will continue to monitor NFA activities through periodic rule enforcement reviews.

United States of America

Before the Commodity Futures Trading Commission, Order Authorizing the Performance of Registration Processing Functions

I. Authority and Background

Section 8a(10) of the Act[8] provides that the Commission may authorize any person to perform any portion of the registration functions under the Act, notwithstanding any other provision of law, in accordance with rules adopted by such person and submitted to the Commission for approval or, if applicable, for review pursuant to Section 17(j) of the Act[9] and subject to the provisions of the Act applicable to registrations granted by the Commission. Section 17(o)(1) of the Act[10] provides that the Commission may require NFA to perform Commission registration functions, in accordance with the Act and NFA rules.

Upon consideration, the Commission has determined to authorize NFA, effective July 3, 1997, to grant or maintain, either with or without conditions or restrictions, FB or FT registration where NFA previously would have forwarded such a case to the Commission for review of disciplinary history in order to provide the Commission with an opportunity to object to such granting or maintenance of registration. However, the Commission will continue to handle any matter that already has been referred to it by NFA. The Commission also will continue to accept or act upon requests for exemption and render ''no-action'' opinions with respect to applicable registration requirements.

NFA remains subject to the present requirement that it monitor compliance with the conditions and restrictions imposed on conditioned and restricted registrants.[11] Such conditions and restrictions are designed to ensure compliance with the Act and Commission regulations and typically include sponsorship and/or an automatic suspension clause, as well as a dual trading prohibition in certain cases involving FBs. Such conditions or restrictions generally are imposed for two years.

In granting and maintaining registration pursuant to this Order, NFA shall be subject to all other requirements and obligations imposed upon it by the Commission in existing or future Orders or regulations. In this regard, NFA also shall implement such additional procedures (or modify existing procedures) as are necessary and acceptable to the Commission to ensure the security and integrity of the FB, FT or applicant records in NFA's custody; to facilitate prompt access to those records by the Commission and its staff, particularly as described in other Commission Orders or rules; to facilitate disclosure of public or nonpublic information in those records when permitted by Commission Orders or rules and to keep logs as required by the Commission concerning disclosure of nonpublic information; and otherwise to safeguard the confidentiality of the records.

II. Conclusion and Order

The Commission has determined, in accordance with the pro-visions of Section 8a(10) of the Act, to authorize NFA, effective July 3, 1997, to perform the following registration functions:

(1) Grant, either with or without conditions, FB or FT registration where NFA previously would have forwarded such a case to the Commission for review of disciplinary history in order to provide the Commission with an opportunity to object to such granting of registration; and

(2) Maintain, either with or without restrictions, FB or FT registration where NFA previously would have forwarded such a case to the Commission for review of new disciplinary history in order to provide the Commission with an opportunity to object to such maintenance of registration.

NFA shall perform these functions in accordance with the standards established by the Act and the regulations promulgated thereunder.

These determinations are based upon the Congressional intent expressed in Sections 8a(10) and 17(o) of the Act that the Commission be allowed to authorize NFA to perform any portion of the Commission's registration responsibilities under the Act for purposes of carrying out these responsibilities in the most efficient and cost-effective manner, and NFA's representations concerning standards and procedures to be followed in administering these functions.

This Order does not, however, authorize NFA to accept or act upon requests for exemption from registration or to render ''no-action'' opinions or interpretations with respect to applicable registration requirements.

Nothing in this Order or in Sections 8a(10) or 17 of the Act shall affect the Commission's authority to review the granting of a registration application by NFA in the performance of Commission registration functions, or to review the maintenance of registration by NFA.[12]

Issued in Washington, D.C. on June 26, 1997 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–17473 Filed 7–2–97; 8:45 am]

BILLING CODE 6351–01–P

[8] 7 U.S.C. 12a(10) (1994).

[9] 7 U.S.C. 21(j) (1994).

[10] 7 U.S.C. 21(o)(1) (1994).

[11] *See* 59 FR 38957, 38958 n.6.

[12] *See also* 7 U.S.C. 21(o) (3) and (4) (1994) and 17 CFR Part 171 (1996).

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and Association Form: Telecommunications Service Priority System; SF Forms 314, 315, 317, 318, 319; OMB Number 0704–0305.

Type of Request: Revision.

Number of Respondents: 96.

Responses per Respondent: 20.

Annual Responses: 1,945.

Average Burden per Response: 2 hours.

Annual Burden Hours: 4,090.

Needs and Uses: This collection of information is necessary to determine participation in and to ensure efficient operation of the Telecommunications Service Priority (TSP) System. The purpose of the TSP System is to provide a legal basis for telecommunications vendors to give priority treatment of particular telecommunications services that have been identified as the most important services supporting national security or emergency preparedness. This information is required to allow the Office of the Manager, National Communications System (OMNCS) to track and identify the telecommunications services that are being provided priority treatment.

Affected Public: Business or Other For-Profit; State, Local, or Tribal Government.

Frequency: On Occasion.

Respondents Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Office for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 27, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–17458 Filed 7–2–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Mental Health Wrap-Around Demonstration Project

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of demonstration project.

SUMMARY: This notice is to advise interested parties of a demonstration project (an amendment to the managed care support contract in regions 7 and 8), in which DoD will enroll a certain number of significantly emotionally disturbed children in TRICARE Regions 7 and 8 into a Mental Health Wraparound demonstration project. In order to be eligible for this project, children must be between the ages of 4 and 16 at the time of enrollment, have a serious emotional disturbance that is generally regarded as amenable to treatment, and, at the time of referral, require at least residential level of care, utilizing Health Management Strategies International, Inc. (HMSI) criteria, or are preparing for discharge from a residential or inpatient facility and are at high risk for recidivism. Additionally, a current DSM IV diagnosis is required. Children and adolescents who have a DSM IV diagnosis which is not generally regarded as either serious and/or amendable to treatment are not eligible for this demonstration. Parental consent is a necessary prerequisite to being enrolled in the demonstration.

The purpose of this demonstration is to determine if: wraparound services provided through comprehensive and continued management of care for child and adolescent mental health patients: (1) Enables shorter inpatient stays and reduces recidivism for inpatient treatment and, (2) reduce costs of inpatient psychiatric and residential care. The contractor shall share financial risk by accepting as a maximum annual payment for such services a case rate reimbursement not in excess of the amount of the annual standard CHAMPUS residential treatment benefit payable (as determined in accordance with section 8.1 of chapter 3 of volume II of the CHAMPUS policy manual). All participants enrolled in this project will be considered as TRICARE Prime enrollees for the purpose of applicable co-pays.

Traditionally, mental health services to children and adolescents have constituted a large portion of CHAMPUS reimbursement costs for DoD. The most expensive form of these services has been the long term residential treatment of children. The efficacy of this treatment modality compared to other emerging less traditional programs has not been assessed sufficiently to determine if it is the most appropriate in terms of patient outcomes and costs. These services have been generally supported through a fee for service or per diem basis. With the transition to managed care principles and practices in DoD, attempts to control costs while maintaining or improving the quality of medical care provided to our beneficiaries has driven DoD to question the traditional mental health delivery systems.

Although the standard CHAMPUS mental health benefit is generous as compared to industry standards, non-institutional benefits currently offered are conservative. They may not lend themselves to well to innovative, managed care efforts which try to effectively treat patients in the least restrictive and most cost effective health care settings. Local, supportive, and individualized services based on the specific needs of the emotionally disturbed child or adolescent are thought to lead to greater improvement in outcomes and relationships with other family members, and in less need for institutional care. The demonstration will provide residential and wraparound services, including nontraditional mental health services that will assist the child to be maintained in the least-restrictive and least-costly setting. The demonstration will offer benefits not currently available under CHAMPUS reimbursement; specifically, alternative living arrangements (therapeutic foster care; therapeutic group living; brief, time-limited respite services in a residential setting; and crisis stabilization in a residential setting), and psychiatric home health care.

The contractor shall ensure a network of facilities is available to service the participants in the demonstration. This shall be a community-based program, utilizing established network and local resources. No mental health services shall be provided which are directly related to custodial care or determined to be primarily educational. All mental health providers used in this demonstration will be CHAMPUS authorized. Providers of unique, CHAMPUS excluded benefits must meet national/local licensing standards and/or credentialling mandates, (i.e. foster care/day care providers).

Upon initial evaluation at the comprehensive treatment facility, each beneficiary in the demonstration project, will be afforded the services of a case manager, who will coordinate and monitor all services provided by each and every member of the client's treatment team. Case managers will, beyond case coordination, have the latitude to make implementation decisions about the provisions of all unique mental health services.

A Clinical Management Committee will be established for the purpose of overseeing the quality of the clinical programs included in this demonstration project. The Clinical Management Committee will include multidisciplinary members.

Portability of like services within regional boundaries may also threaten the efficacy of mental health treatment for DoD beneficiaries in this age group. The continuation of support for these children regardless of their location within the regional boundaries will be an important part of this demonstration. This seamless continuum of care offered to these children will contribute to their recovery with the most effective use of available resources. The demonstration will ensure that wraparound services will continue to be provided to an enrolled child who moves to another location within TRICARE Regions 7/8 during the period of the demonstration.

The demonstration project will be evaluated using predetermined outcome oriented treatment objectives. The evaluation will assess the feasibility of implementing the program throughout the military health service system. DoD will conduct this demonstration for a period of at least two years from November 1, 1997, through September 30, 1999. This demonstration project is being conducted under the authority of

10 U.S.C. 1092 and section 716 of the National Defense Authorization Act for Fiscal Year 1996 (Public L. 104–106).

EFFECTIVE DATE: November 1, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Marion Gosnell or Dr. John Sentell, Office of the Assistant Secretary of Defense (Health Affairs), telephone (703) 697–8975.

Dated: June 27, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–17457 Filed 7–2–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Active Duty Service Determination for Civilian or Contractual Groups

On June 2, 1997, the Secretary of the Air Force determined that the service of the group known as ''Yugoslavians attached to Headquarters 2677th Regiment, Office of Strategic Services (Prov.), Bari, Italy, who served in a military capacity with the United States Armed Forces in German occupied Yugoslavia'' shall not be considered ''active duty'' under the provisions of Public Law 95–202 for the purposes of all laws administered by the Department of Veteran Affairs (VA).

Barbara A. Carmichael,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–17505 Filed 7–2–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Environmental Assessment and Finding of No Significant Impact for the Transfer of the Common-Use Ground Communication-Electronics Maintenance Workload From Sacramento Air Logistics Center, McClellan Air Force Base, Sacramento, California, to Tobyhanna Army Depot, Tobyhanna, Pennsylvania

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with Public Law 101–510 (as amended), the Defense Base Closure and Realignment Act of 1990, the 1995 Defense Base Closure and Realignment Commission (BRAC) recommended the transfer of the Common-Use Ground Communication-Electronics (GCE) maintenance from the Sacramento Air Logistics Center (SM–ALC), McClellan Air Force Base, Sacramento, California, to Tobyhanna Army Depot (TYAD), Tobyhanna, Pennsylvania.

The Environmental Assessment (EA) evaluates the anticipated environmental impacts associated with the proposed transfer of the GCE maintenance and 982 associated civilian positions from SM–ALC to TYAD. This transfer includes upgrading and renovating existing facilities and transferring test facilities and equipment to support mission receipt at TYAD. No new major construction is necessary.

The EA, which is incorporated into the Finding of No Significant Impact, examines potential impacts of the proposed action and alternatives on 13 resource areas and areas of environmental concern: land use, air quality, noise, water resources, geology, infrastructure, training areas, hazardous and toxic materials, biological resources and ecosystems, cultural resources, the sociological environment, economic development, and quality of life.

As the workload being relocated largely offsets recently experienced and projected future reductions at TYAD, the analysis found in the EA determined that the potential impacts on the quality of the natural or human environment from these relocations and facilities renovations would be temporary and not significant and would be mitigated through the use of best management practices. Therefore, implementation of the proposed action, subject to public comment, will not require the preparation of an Environmental Impact Statement.

DATES: Inquiries will be accepted until August 4, 1997.

ADDRESSES: A copy of the EA or inquiries into the FNSI may be obtained by writing to the Commander, Tobyhanna Army Depot, ATTN: SIOTY–PA (Mr. Kevin Toolan), 11 Hap Arnold Blvd., Tobyhanna, PA 18466–5076, or calling (717) 895–7308.

Dated: June 30, 1997.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 97–17495 Filed 7–2–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Notice of Intent to Solicit National Industrial Competitiveness Through Energy, Environment and Economics (NICE ^{3}) Grants

AGENCY: Department of Energy (DOE).

ACTION: Notice of Intent to Issue a Solicitation.

SUMMARY: The Office of Industrial Technologies of the Department of Energy is funding a State Grant Program entitled National Industrial Competitiveness through Energy, Environment and Economics (NICE ^{3}). The goals of the NICE ^{3} Program are to improve energy efficiency, promote cleaner production, and to improve competitiveness in industry. The intent of the NICE ^{3} program is to fund innovative projects that have completed the research and development stage and are ready to demonstrate a fully integrated commercial unit. Some industrial technologies that the NICE ^{3} program has funded follow: SO_3 Cleaning Process in the Manufacture of Semiconductors; Innovative Design of a Brick Kiln Using Low Thermal Mass Technology; Continuously Reform Electroless Nickel Plating Solutions; Fiber Loading for Paper Manufacture; and HCl Acid Recovery System. For the past seven years the NICE ^{3} program has offered 78 grants (approximately $25.3 million) to fund innovative industrial technologies. In 1997 the Department of Energy offered $4.8 million in grants to 13 U.S. companies in 11 states.

Restricted Eligibility: Eligible applicants for purposes of funding under the program include any authorized agency of the 50 States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, and any territory or possession of the United States. For convenience, the term State in this notice refers to all eligible State agency applicants. Local governments, State and private universities, private non-profits, private businesses and individuals, who are not eligible as direct applicants, must work with the appropriate State agencies in developing projects and forming participation arrangements. DOE requires these types of cooperative arrangements in support of program goals. The Catalog of Federal Domestic Assistance number assigned to this program is 81.105. Cost sharing is required by all participants. The Federal Government will provide up to 45 percent of the funds for the project. The

remaining funds must be provided by the eligible applicants and/or cooperating project participants. Cost sharing, by industry/State partners, beyond the 55 percent required match is desirable. In addition to direct financial contributions, cost sharing can include beneficial services or items, such as manpower, equipment, consultants and computer time that are allowable in accordance with applicable cost principles. The inclusion of industrial partners is required for a proposal to be considered responsive to the solicitation to be eligible for grant consideration. A State agency application signed by an authorized State official is required for a proposal to be responsive.

Availability of Funds in FY 1998: With this publication, DOE is announcing the availability of up to $6 million dollars in grant/cooperative agreement funds for fiscal year 1998. The awards will be made through a competitive process. In response to the solicitation, a State agency may include up to 10 percent, not to exceed $25,000 per project, for State agency program support. The Federal share of grants including State agency program support may range up to $425,000. Projects may cover a period of up to 3 years. DOE reserves the right to fund, in whole or in part, any, all, or none of the proposals submitted in response to this notice.

Availability of the Solicitation: DOE expects to issue the solicitation on August 1, 1997. To obtain a copy of the solicitation, eligible parties may write to the U.S. Department of Energy Golden Field Office, Attention: Amy Johnson, 1617 Cole Boulevard, Golden, Colorado 80401, or obtain an electronic copy through the Golden Field Office Home Page at http://www.eren.doe.gov/golden/solicit.htm beginning August 1, 1997. Only written requests for the solicitation will be honored. For convenience, requests for the solicitation and referrals to the appropriate state agency may be faxed to Ms. Johnson at (303) 275–4788.

Issued in Golden, Colorado, on June 25, 1997.

John W. Meeker,

Chief, Procurement, GO.

[FR Doc. 97–17346 Filed 7–2–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–596–000]

ANR Pipeline Company; Notice of Application

June 27, 1997.

Take notice that, on June 20, 1997, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed an abbreviated application requesting: (1) permission and approval, pursuant to Section 7(b) of the Natural Gas Act, to abandon (i.e., spin-down) a portion of its Holly Ridge Lateral facilities to ANR Field Services Company (ANRFS); (2) authorization, pursuant to Section 7(c) of the Natural Gas Act, to refunctionalize the Holly Ridge Lateral facilities that ANR will retain, from gathering to transmission; and (3) that the Commission find that the facilities to be transferred to ANRFS will be non-jurisdictional facilities after the transfer, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

The Holly Ridge Lateral facilities include 26.98 miles of 8-inch diameter pipeline, two 600 horsepower (hp) compressors, and a meter station. The first leg of the Holly Ridge Lateral extends for 15.88 miles, from ANR's Holly Ridge Meter Station, in Section 30, T11N, R10E, Tensas Parish, Louisiana, and on to ANR's Gilbert Interconnection with Mid Louisiana Gas Company, located in Section 8, T12N, R8E, Franklin Parish, Louisiana.From the Gilbert Interconnection, the Holly Ridge Lateral continues for another 11.1 miles to the a tie-in with ANR's Southeast Mainline, in Section 12, T13N, R6E, Franklin Parish, Louisiana.

ANR proposes to spindown the 15.88-mile portion of its Holly Ridge Lateral, the two 600 hp compressors, and the meter station to ANRFS. ANR proposes to retain and refunctionalize (from gathering to transmission) the remaining 11.1 miles of its Holly Ridge Lateral, and the Gilbert Interconnection. ANR requests that the Commission issue an order in this proceeding by August 1, 1997, authorizing ANR to spindown (to ANRFS) the Holly Ridge Lateral facilities upstream of the Gilbert Interconnection, authorizing ANR to refunctionalize the remaining Holly Ridge Lateral facilities (from gathering to transmission), and finding that the transferred facilities will be non-jurisdictional facilities after they have been transferred to ANRFS.

Any person desiring to be heard, or to make any protest with reference to said application should, on or before July 18, 1997, file with the Federal Energy Regulatory Commission, Washington D.C., 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding, or to Docket participate as a party in any hearing therein, must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application, if no motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment and a grant of the certificate authorization are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–17439 Filed 7–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–400–000]

Columbia Gas Transmission Corporation; Notice of Termination of Gathering Services

June 27, 1997.

Take notice that on June 25, 1997, Columbia Gas Transmission Corporation (Columbia), tendered for filing a notice of termination of gathering service upon the transfer by sale of Columbia's Line 2 to Eastern American Energy

Corporation (Eastern). Columbia states that to date seven shippers, representing 80 percent of the volumes through the facility, have entered into gathering agreements with Eastern and that Eastern intends to continue to offer the service to the remaining shippers.

Columbia states that this filing is being made in compliance with the Commission's ''Order Approving Default Contract and Granting Abandonment Authority'' dated August 2, 1996, Section 4 of the Natural Gas Act (NGA), and Part 154, Subpart C of the Commission's Regulations. Columbia has proposed an effective date of August 1, 1997, for the transfer of the facilities and the termination of its service. At which time Eastern will initiate its service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 7, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–17438 Filed 7–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–583–000]

Columbia Gas Transmission Company; Notice of Request Under Blanket Authorization

June 27, 1997.

Take notice that on June 16, 1997, Columbia Gas Transmission Company (Columbia), 1700 MacCorkle Avenue, S.E., West Virginia, 25314–1599 filed in Docket No CP97–583–000, a request pursuant to Sections 157.205, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212 and 157.216) for authorization to relocate four points of delivery to New York State and Electric and abandon approximately 19.38 miles of ten-inch pipeline located in Steuben and Schuyler Counties, New York, under Columbia's blanket certificate issued in Docket No. CP83–76–000, pursuant to Section 7(b)) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Any person or the Commission Staff may, within 45 days of the issuance if the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 76 of the Natural Gas Act.

Lois Cashell,

Secretary.

[FR Doc. 97–17443 Filed 7–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–602–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

June 27, 1997.

Take notice that on June 23, 1997, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP97–602–000 a request pursuant to Sections 157.205, 157.211 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157,211 and 157.216) for authorization to abandon certain facilities in Arkansas and to construct and operate certain facilities in Arkansas to deliver gas to ARKLA, a distribution division of NorAm Energy Corp (ARKLA), under NGT's blanket certificate issued in Docket No. CP82–384–000, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT proposes to replace and upgrade an existing tap on its Line AM–22 in Garland County, Arkansas, to provide increased volumes to ARKLA's rural distribution lines. NGT states that the total estimated volumes to be delivered through these facilities is 8,000 MMBtu annually and 40 MMBtu on a peak day. In addition, NGT estimates the cost of this project to be $2,802, of which ARKLA will reimburse NGT $2,500.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–17444 Filed 7–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–226–002]

Questar Pipeline Company; Notice of Tariff Filing

June 27, 1997.

Take notice that on June 25, 1997, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 163 and Substitute Third Revised Sheet No. 167, to be effective May 1, 1997.

Questar states that the proposed tariff sheets clearly explain that firm storage customers may release their storage capacity, injection and withdrawal rights separately and also include approved interruptible storage service allocation language, as required by the February 12 order.

Questar explains further that it has clarified in this tariff filing the previously approved rates and billing units that are applicable to releases of independent components of storage service at Clay Basin.

Questar states that a copy of this filing has been served upon its customers and affected public service commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–17440 Filed 7–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–112–021]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

June 27, 1997.

Take notice that on June 24, 1997, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Sub First Revised Sheet No. 129A in compliance with the Commission's June 9, 1997, Letter Order in the above-referenced docket (Letter Order).

Tennessee submits that this revised tariff sheet corrects a typographical error in compliance with the directive of the Letter Order. As provided in the Letter Order, Tennessee requests that this sheet be deemed effective March 1, 1997.

Tennessee further states that copies of the filing have been mailed to all intervening parties in the above-referenced dockets.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–17441 Filed 7–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP95–64–002 and RP96–292–001]

Tennessee Gas Pipeline Company; Notice of Revision to Cashout Report

June 27, 1997.

Take notice that on May 21, 1997, Tennessee Gas Pipeline Company (Tennessee) tendered for filing a revised Appendix A, Schedule 1 to its first and second annual cashout reports for the September 1993 through August 1995 periods reported in Docket Nos. RP95–64–RP96–292.

In accordance with Article IV, Section F of Tennessee's February 28, 1997, Stipulation and Agreement in Docket No. RP93–151, *et al.* wherein Tennessee agreed to file a revised chashout reconciliation report within 35 days of Commission approval of said Stipulation and Agreement, these appendices reflect the removal of $11,996,210 of costs in the cashout mechanism associated with natural gas that was injected into storage by Tennessee and used for operational purposes between December 1993 and March 1994.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 7, 1997. Protests will be considered by the Commission is determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–17442 Filed 7–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC97–42–000, et al.]

Boston Edison Company, Inc., et al. Electric Rate and Corporate Regulation Filings

June 26, 1997.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Company

[Docket No. EC97–42–000]

Take notice that on June 20, 1997, Boston Edison Company (Boston Edison), pursuant to Section 203 of the Federal Power Act and 18 CFR Part 33 of the Commission's Regulations, filed an application for approval of its sale to New England Power Company (NEP) of 14/24 kV underground facilities in Quincy, Massachusetts.

In December 1995 Boston Edison agreed to sell to NEP for $2.9 million all of its underground facilities in Quincy, except for those associated with the tunnel under the Fore River. The sale enables NEP to serve its Quincy load and has the effect of extending the useful service life of transmission facilities that Boston Edison otherwise would have retired. Boston Edison submits that the sale is consistent with the public interest and requests the Commission to approve the sale within 60 days.

Comment date: July 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. CMESCO Energy Service Company

[Docket No. EG97–71–000 Limited]

On June 19, 1997, CMESCO Energy Service Company Limited (Applicant), with its principal office at c/o CMS Generation Co., Fairlane Plaza South, 330 Town Center Drive, Suite 1000, Dearborn, Michigan 48126, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant will operate, as an agent of the owner, an approximately 170 MW combined cycle cogeneration plant (the Facility) located at the Bang Pakong Industrial Park II near Bangkok, Thailand. Electric energy produced by the Facility will be sold to the Electricity Generation Authority of Thailand, the primary government-owned electric utility company in Thailand and to industrial users in the Bang Pakong Industrial Park II. In no

event will any electric energy be sold to consumers in the United States.

Comment date: July 17, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Ohio Edison Company Pennsylvania Power Co.

[Docket Nos. ER97–1035–000, ER97–1557–000, ER97–1815–000, ER97–1918–000, ER97–2102–000, ER97–2119–000, ER97–2308–000, ER97–2326–000, ER97–2508–000]

Take notice that on May 27, 1997, Ohio Edison Company on behalf of its subsidiary Pennsylvania Power Company tendered for filing an amendment in the above-referenced dockets.

Comment date: July 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Arizona Public Service Company

[Docket No. ER97–1672–001]

Take notice that on June 3, 1997, Arizona Public Service Company tendered for filing an amendment in the above-referenced docket.

Comment date: July 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Detroit Edison Company

[Docket No. ER97–2804–000]

Take notice that on June 20, 1997, Detroit Edison Company tendered for filing an amendment in the above-referenced docket.

Comment date: July 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Penobscot Bay Energy Company, L.L.C.

[Docket No. ER97–2875–000]

Take notice that on May 27, 1997, Penobscot Bay Energy Company tendered for filing an amendment in the above-referenced docket.

Comment date: July 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Mid-Continent Area Power Pool

[Docket No. ER97–3185–000]

Take notice that on May 27, 1997, Mid-Continent Area Power Pool tendered for filing its informational filing informing the Commission of new members of the Mid-Continent Area Power Pool.

Comment date: July 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Company (Minnesota Company)

[Docket No. ER97–3268–000]

Take notice that on June 10, 1997, Northern States Power Company (Minnesota) (NSP), tendered for filing a Firm Point-to-Point Transmission Service Agreement between NSP and Delhi Energy Services.

NSP requests that the Commission accept the agreement effective May 11, 1997, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: July 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Potomac Electric Power Company

[Docket No. ER97–3274–000]

Take notice that on June 10, 1997, Potomac Electric Power Company (Pepco), tendered for filing the service agreement pursuant to Pepco FERC Electric Tariff, Original Volume No. 1, entered into between Pepco and Eastern Power Distribution, Inc. An effective date of June 10, 1997 for these service agreements, with waiver of notice, is requested.

Comment date: July 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Public Service Corporation

[Docket No. ER97–3275–000]

Take notice that on June 10, 1997, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and NIPSCO Energy Services, Inc. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: July 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Western Resources, Inc.

[Docket No. ER97–3276–000]

Take notice that on June 12, 1997, Western Resources, Inc. tendered for filing a non-firm transmission agreement between Western Resources and NP Energy Inc. Western Resources states that the purpose of the agreement is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreement is proposed to become effective May 27, 1997.

Copies of the filing were served upon NP Energy Inc. and the Kansas Corporation Commission.

Comment date: July 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. UtiliCorp United Inc.

[Docket No. ER97–3277–000]

Take notice that on June 12, 1997, UtiliCorp United Inc. (UtiliCorp), filed service agreements with PECO Energy Company-Power Team for service under its non-firm point-to-point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: July 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. UtiliCorp United Inc.

[Docket No. ER97–3278–000]

Take notice that on June 12, 1997, UtiliCorp United Inc. (UtiliCorp), filed service agreements with Williams Energy Services Company for service under its non-firm point-to-point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: July 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Duquesne Light Company

[Docket No. ER97–3279–000]

Take notice that on June 12, 1997, Duquesne Light Company (DLC), filed a Service Agreement dated April 30, 1997 with Northern Indiana Public Service Company under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds Northern Indiana Public Service Company as a customer under the Tariff. DLC requests an effective date of June 5, 1997 for the Service Agreement.

Comment date: July 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. New England Power Pool

[Docket No. ER97–3280–000]

Take notice that on June 12, 1997, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by Tractebel Energy Marketing, Inc. (Tractebel). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would permit Tractebel to join the over 100

Participants that already participate in the Pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Tractebel a Participant in the Pool. NEPOOL requests an effective date on or before July 1, 1997, or as soon as possible thereafter for commencement of participation in the Pool by Tractebel.

Comment date: July 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. South Carolina Electric & Gas Company

[Docket No. ER97–3281–000]

Take notice that on June 12, 1997, South Carolina Electric & Gas Company (SCE&G) submitted service agreements establishing Pennsylvania Power & Light Company (PP&L), Morgan Stanley & Company, Inc. (MSC), Peco Energy (PECO), and Alabama Electric Cooperative (AEC) as customers under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreements. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon PP&L, MSC, PECO, AEC, and the South Carolina Public Service Commission.

Comment date: July 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–3282–000]

Take notice that on June 11, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to PacifiCorp Power Marketing, Inc. (PacifiCorp).

Con Edison states that a copy of this filing has been served by mail upon PacifiCorp.

Comment date: July 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Southern California Edison Company

[Docket No. ER97–3283–000]

Take notice that on June 11, 1997, Southern California Edison Company (Edison), tendered for filing Service Agreements (Service Agreements) with Pacific Gas & Electric, Enron Power Marketing, Inc., and the City of Vernon for Firm Point-To-Point Transmission Service under Edison's Open Access Transmission Tariff (Tariff) filed in compliance with FERC Order No. 888, and a Notice of Cancellation of Service Agreement Nos. 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, and 132 under FERC Electric Tariff, Original Volume No. 4.

Edison filed the executed Service Agreements with the Commission in compliance with applicable Commission regulations. Edison also submitted a revised Sheet No. 152 (Attachment E) to the Tariff, which is an updated list of all current subscribers. Edison requests waiver of the Commission's notice requirement to permit an effective date of June 12, 1997 for Attachment E, and to allow the Service Agreements to become effective and terminate according to their terms.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: July 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Idaho Power Company

[Docket No. ER97–3284–000]

Take notice that on June 11, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission Service Agreements under Idaho Power Company FERC Electric Tariff No. 5, Open Access Transmission Tariff, between Idaho Power Company and E Prime, Inc., and Idaho Power Company and Williams Energy Services Company.

Comment date: July 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Peco Energy Company

[Docket No. ER97–3285–000]

Take notice that on June 11, 1997, PECO Energy Company (PECO), filed a Service Agreement dated May 29, 1997 with City of Homestead (HOMESTEAD) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds HOMESTEAD as a customer under the Tariff.

PECO requests an effective date of May 29, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to HOMESTEAD and to the Pennsylvania Public Utility Commission.

Comment date: July 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Central Illinois Light Company

[Docket No. ER97–3286–000]

Take notice that on June 11, 1997, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, on June 11, 1997, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements for four new customers.

CILCO requested an effective date of June 4, 1997.

Copies of the filing were served on all affected customers and the Illinois Commerce Commission.

Comment date: July 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Boston Edison Company

[Docket No. ER97–3287–000]

Take notice that on June 11, 1997, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for E Prime, Inc. (E Prime). Boston Edison requests that the Service Agreement become effective as of June 1, 1997.

Edison states that it has served a copy of this filing on E Prime and the Massachusetts Department of Public Utilities.

Comment date: July 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. PECO Energy Company

[Docket No. ER97–3288–000]

Take notice that on June 11, 1997, PECO Energy Company (PECO), filed a Service Agreement dated May 29, 1997 with Eastern Power Distribution, Inc. (EPDI) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds EPDI as a customer under the Tariff.

PECO requests an effective date of May 29, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to EPDI and to the Pennsylvania Public Utility Commission.

Comment date: July 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Ohio Edison Company Pennsylvania Power Company

[Docket No. OA97–595–000]

Take notice that on May 13, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, Revisions to its Standards of Conduct pursuant to Ohio Edison's Open Access Tariff.

Comment date: July 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. The United Illuminating Company

[Docket No. OA97–597–000]

Take notice that on May 13, 1997, The United Illuminating Company (UI) tendered for filing revisions to its Policy Implementing the FERC Standards of Conduct (Policy). In these revisions, UI changes its Policy largely to reflect the revisions to the Commission's standards of conduct contained in Order No. 889–A, 62 FR 12484 (March 14, 1997), FERC Stats. & Regs. ¶ 31,049 (1997). UI also submits minor revisions to its Policy (1) to reflect the dissolution of the New England Power Exchange and the assumption of its functions by the New England Power Pool (NEPOOL) System Operator, and (2) to indicate that UI will post its Policy on UI's page on the Open Access Same-time Information System (OASIS) operated by NEPOOL.

UI requests an effective date for the revisions of May 13, 1997, consistent with the effective date of Order No. 889–A. Copies of the filing were served upon all persons listed on the official service list compiled by the Secretary in Docket No. OA97–521–000, the docket in which UI filed its original Policy.

Comment date: July 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Valley Electric Association, Inc.

[Docket No. OA97–603–000]

Take notice that on June 6, 1997, Valley Electric Association, Inc. (Valley) tendered for filing a request for waiver of the Commission's Order No. 888 requirement that it file an open access transmission tariff and the Commission's Order No. 889 Open Access Same-Time Information System (OASIS) requirements and Standards of Conduct. Valley requests these waivers because it is a small public utility that owns only limited and discrete transmission facilities and is not a control area operator. Valley also seeks waiver of the Commission's prior notice filing requirement.

Comment date: July 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. PECO Energy Company

[Docket No. TX97–8–000]

On June 17, 1997, PECO Energy Company—Power Team (PECO), filed an application requesting that the Commission order Oglethorpe Power Corporation (OPC) to provide PECO with transmission services pursuant to Section 211 of the Federal Power Act. Because OPC's transmission business has recently been assumed by the Georgia Transmission Corporation (GTC) (which is owned in part by OPC) as part of a restructuring of OPC, the Application is also directed, to the extent necessary, to GTC.

PECO requests the Commission to order OPC (or GTC, to the extent necessary) to provide PECO with 250 MW of firm, point-to-point transmission service from the Tennessee Valley Authority/Southern Company interface across the Georgia Integrated Transmission system to the Florida interface for a rolling three-year term, or such other amount of transmission service to which the Commission determines PECO is entitled.

Comment date: July 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–17474 Filed 7–2–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed; Week of April 21 Through April 25, 1997

During the Week of April 21 through April 25, 1997, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585–0107.

Dated: June 26, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

SUBMISSION OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS, DEPARTMENT OF ENERGY

[Week of April 21 Through April 25, 1997]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 23, 1997	Personnel Security Hearing	VSO–0154	Request for hearing under 10 CFR part 710. If granted: An individual employed by the Department of Energy would receive a hearing under 10 CFR Part 710.
Do	Personnel Security Hearing	VSO–0155	Request for Hearing under 10 CFR part 710. If granted An individual employed by the Department of Energy would receive a hearing under 10 CFR part 710.
Apr. 25, 1997	Bonita L. Haynes, Albuquerque, New Mexico.	VFA–0290	Appeal of an Information Request Denial. If granted: The March 25, 1997 Freedom of Information Request Denial issued by the Office of Inspector General would be rescinded, and Bonita L. Haynes would receive access to certain DOE information.

[FR Doc. 97–17485 Filed 7–2–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders; Week of May 26 Through May 30, 1997

During the week of May 26 through May 30, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: June 26, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 35; Week of May 26 Through May 30, 1997

Appeals

Martha J. McNeely, 5/27/97, VFA–0291

Martha J. McNeely filed an Appeal from a determination issued by the Freedom of Information and Privacy Act Division (FOI/PAD). In that determination, FOI/PAD indicated that it could not locate Ms. McNeely's medical records. In her Appeal, Ms. McNeely asserted that a letter she had received from Dr. Tara O'Toole, DOE Assistant Secretary, contained information that could only have come from her medical records. The DOE rejected that contention, indicating that Dr. O'Toole's letter was based solely on information Ms. McNeely had submitted. Therefore, the Appeal was denied.

Mary Feild Jarvis, 5/29/97, VFA–0292

Mary Feild Jarvis filed an Appeal from a determination issued to her by the Richland Operations Office (Richland Operations) of the Department of Energy (DOE) in response to a Request for Information submitted under the Freedom of Information Act (FOIA). Ms. Jarvis' request sought the names listed in, and the substance of, a report of a possible breach of the standards of ethical conduct by a DOE employee. Richland Operations had withheld this information under Exemption 6 of the FOIA, protecting personal privacy. In considering the Appeal, the DOE found, in a case of first impression, that a person reporting a potential ethical concern by a DOE employee has a protectable privacy interest for the purposes of Exemption 6 for the same reason that others who report alleged governmental misconduct have a privacy interest. In this case, the DOE found no public interest that outweighed the privacy interest and thus found that Richland Operations properly withheld the name, identifying information, and associated phrases of the person who reported the ethics concern. However, in this case, the DOE found no protectable privacy interest in the names and affiliations of persons with actual knowledge of the alleged ethics infraction nor in the report of the ethics concern. In the case of the former, the DOE determined that there was nothing private revealed about the named people, and in the case of the latter, the DOE found the concern written in such a manner that it was highly unlikely that one could determine who reported the ethics concern. Accordingly, the Appeal was granted in part, denied in part, and remanded to the Richland Operations Office with instructions to issue a new determination either releasing the specified material or asserting and explaining further privacy interests and balancing them with any public interest.

Personel Security Hearing

Personnel Security Hearing, 5/29/97, VSO–0136

An Office of Hearings and Appeals Hearing Officer issued an opinion under 10 C.F.R. Part 710 concerning the continued eligibility of an individual for access authorization. After considering the testimony at the hearing convened at the request of the individual and all other information in the record, the Hearing Officer found that the individual had violated a DOE Drug Certification, and that this raised security concerns under 10 C.F.R. § 710.8(1). However, the Hearing Officer further found that the individual presented sufficient evidence to mitigate the security concern. Specifically, the Hearing Officer found that the individual (i) used an illegal drug only one time in the 16 years since he signed the Drug Certification, (ii) convincingly expressed his commitment not to violate his Drug Certification in the future, and (iii) provided ample evidence that he would not use illegal drugs in the future. Accordingly, the Hearing Officer recommended that the individual's access authorization, which had been suspended, should be restored.

Refund Application

Burkland Oil Company, Cal's Supply, Inc., T.A. Weisman, Milkiken & Servas, Inc., Johnson Oil Company, Fraser Oil Company, Brookline Avenue Service, Schlottman Oil Company, Mike Junker, 5/29/97, RR72–00024, RR272–00025, RR272–00026, RR272–00027, RR272–00028, RR272–00029, RR272–00030, RR272–00031, RR272–00032

The Department of Energy (DOE) issued a Decision and Order concerning Motions for Reconsideration filed in the Crude Oil Subpart V Special Refund Proceeding. Each of the nine applicants had been denied a refund in that proceeding on the grounds that they were either a retailer or repeller and had not rebutted the presumption that these classes of persons were not harmed by overcharges in the pricing of crude oil during the period of controls. In their Motions for Reconsideration, each of the applicants attempted to rebut the non-injury presumption by relying on the statements of Dr. Peter D. Linneman given while the DOE was considering evidence during its preparation of the Report on Stripper Well Overcharges for the United States District Court of Kansas. In accord with precedent, the DOE found Dr. Linneman's general econometric statements are not sufficient to demonstrate that any particular claimant was injured by crude oil overcharges. In addition, the applicants did not submit any further evidence to show injury. Accordingly, the Motions for Reconsideration were denied.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Allied Signal, Inc	RR272–285	5/27/97
American Tar Company (ATCO)	RJ272–00042	5/30/97
Calcasieu Refining Co	RG272–76	5/30/97
Farmers Cooperative, Thorp	RG272–679	5/29/97
Heritage FS, Inc et al	RG272–160	5/30/97
Missouri Farm Bureau SVC et al	RK272–01761	5/27/97
Norwood School District et al	RF272–96313	5/29/97
Perkins Drilling, Inc., et al	RK272–03757	5/27/97
Sidney & Darlene Daily et al	RK272–04058	5/30/97

Dismissals

The following submissions were dismissed.

Name	Case No.
Arch Bilt Container Corp./G. Fisher	RK272–04198
Cortland Bulk Milk Prod. Co-Op, Inc	RG272–00868
Pilot Freight Lines, Inc	RG272–00583
The Trane Co	RF272–98768

[FR Doc. 97–17484 Filed 7–2–97; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5852–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Agency Information Collection Activities, New Source Performance Standards for Storage Vessels for Petroleum Liquids

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS for Petroleum Storage Liquid Vessels. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 4, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260-2740, and refer to EPA ICR No. 1797.01.

SUPPLEMENTARY INFORMATION:

Title: Agency Information Collection Activities, New Source Performance Standards for Petroleum Storage Liquid Vessels, Subpart K, 40 CFR 60; EPA ICR No. 1797.01. This is a request for reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: Owners/Operators subject to NSPS Subpart K are required to record the petroleum liquid stored, the period of storage and maximum true vapor pressure of that liquid, plus any malfunctions or shut downs of the tank during the respective storage period of the liquid.

Information is recorded in sufficient detail to enable owners or operators to demonstrate the means of complying with the applicable standard. Under this standard, the data collected and recorded is retained at the facility for a minimum of two years and made available to the Administrator either on request or by inspection.

The information generated by the recordkeeping and reporting requirements are used by the Agency to ensure that facilities affected by the NSPS continue to operate in compliance with the NSPS.

The information collected from the recordkeeping and reporting requirements is also used for targeting inspections, and is of sufficient quality to be used as evidence in court. Collection of this information is authorized at 40 CFR 60.7 and 60.110. Any information submitted to the Agency, for which a claim of confidentiality is made, will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Business Information (see 40 CFR 2; 41 FR 36902, September 1, 1976; amended by 43 FR 40000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 17674, March 23, 1979). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 12/2/96 (61 FR 63840); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 3 to 7 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Storage Vessels of Petroleum Liquids; constructed/reconstructed or modified between 6/11/73 and 5/19/78.

Estimated Number of Respondents: 220.

Frequency of Response: Occasionally.

Estimated Total Annual Hour Burden: 678 hours.

Estimated Total Annualized Cost Burden: $23,746.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses.

Please refer to EPA ICR No. 1797.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503

Dated: June 26, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97–17475 Filed 7–2–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5482–0]

Environmental Impact Statements; Notice of Availability

AGENCY: Office of Federal Activities, General Information (202) 564–7167 or (202) 564–7153.

Weekly Receipt of Environmental Impact Statements Filed June 23, 1997 Through June 27,1997 Pursuant to 40 CFR 1506.9

EIS No. 970239, Draft EIS, NRCS, TX, Bexar-Medina-Atascosa Counties Water Conservation Plan, Renovation and Installation, Funding, Medina Lake, Bexar, Medina and Atascosa Counties, TX , *Due:* August 18, 1997, *Contact:* John P. Burt (254) 298–1214.

EIS No. 970240, Draft EIS, FHW, PA, Southern Beltway Transportation Project, Construction from PA–60 in Finlay Township to US 22 in Robinson Township, Funding and COE Section 404 Permit, Allegheny and Washington Counties, PA , *Due:* August 20, 1997, *Contact:* Ronald W. Carmichael (717) 782–3461.

EIS No. 970241, Draft EIS, FHW, MN, MN-Trunk-Highway-371 (MN–TH–371) Relocation Project, New Construction, North of the entrance to the Crow Wing State Park to the existing City of Baxter, Funding and US Army COE Section 10 Permit Issuance, Crow Wing Township, Crow Wing County, MN, *Due:* August 21, 1997, *Contact:* Cheryl Martin (612) 291–6120.

EIS No. 970242, Final Supplement, NOA, Regulatory EIS—Atlantic Coast Weakfish Fishery, Fishery Management Plan, Implementation, Updated Information concerning Weakfish Harvest Control in the Atlantic Ocean Exclusive Economic Zone (EEZ), off the New England, Mid-Atlantic and South Atlantic Coasts, *Due:* August 04, 1997, *Contact:* Paul Perra (301) 427–2014.

EIS No. 970243, Final EIS, UAF, CA, Programmatic EIS—McClellan Air Force Base (AFB) Disposal and Reuse Including Rezoning of the Main Base, Implementation, Federal Permits, Licenses or Entitlements, Sacramento County, CA , *Due:* August 04, 1997, *Contact:* Rick Solander (916) 643–0830.

EIS No. 970244, Draft EIS, NAS, CA, WA, UT, X–33 Advanced Technology Demonstrator Vehicle Program, Final Design, Construction and Testing, Implementation, Approvals and Permits Issuance, CA, UT and WA, *Due:* August 18, 1997, *Contact:* Rebecca C. McCaleb (205) 544–4367.

EIS No. 970245, Final Supplement, NAS, Cassini Spacecraft Exploration Mission to Explore the Planet Saturn and its Moons, Implementation, Updated Information concerning Potential Accidents during the Lunch and Cruise Phase of the Mission, *Due:* August 04, 1997, *Contact:* Mark R. Dahl (202) 358–1544.

EIS No. 970246, Final EIS, FAA, NH, Manchester (New Hampshire) Airport Master Plan Update, Improvements to Airside and Landside Facilities, Airport Layout Plan, Permits and Approvals, Manchester, NH , *Due:* August 04, 1997, *Contact:* John C. Silva (617) 238–7602.

Amended Notices

EIS No. 970223, Draft EIS, NPS, TN, Stones River National Battlefield General Management Plan and Development Concept Plan, Implementation, Ruthford County, TN, *Due:* September 04, 1997, *Contact:* Mary Ann Peckham (615) 893–9501. Published FR–06–20–97–Correction to the Agency's Bureau Code from BLM to NPS and Due Date Correction.

Dated: June 30, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–17511 Filed 7–2–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30412A; FRL–5727–7]

Rhone-Poulenc Company; Approval of Pesticide Product Conditional Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to conditionally register the pesticide products Finish and Cyclanilide Technical containing new active ingredients not included in any previously registered product pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, 703–305–7740; e-mail: giles-parker.cynthia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the Fact Sheet are available from the EPA home page at the Environmental Sub-Set entry for this document under ''Regulations'' (http://www.epa.gov/fedrgstr/).

EPA issued a notice, published in the **Federal Register** of June 14, 1996 (61 FR 30234; FRL–5373–7), which announced that Rhone-Poulenc AG Company, P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709, had submitted applications to register the pesticide products Finish (EPA File Symbol 264–LAU), which contained the active ingredients ethephon (2-chloroethyl)phosphonic acid at 35.1 percent and cyclanilide 1-(2,4-dichlorophenylaminocarbonyl)-cyclopropane carboxylic acid at 4.3 percent and for Cyclanilide Technical (EPA File Symbol 264–LAL), containing the active ingredient cyclanilide 1-(2,4-dichlorophenylaminocarbonyl)-cyclopropane carboxylic acid at 98.5 percent, an active ingredient not included in any previously registered products.

The applications were approved on May 19, 1997, as Finish for use as a harvest aid on cotton (EPA Registration Number 264–564), and Cyclanilide Technical for manufacturing use only (EPA Registration Number 264–565).

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not

cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of ethephon (2-chloroethyl)phosphonic acid and cyclanilide 1-(2,4-dichlorophenylaminocarbonyl)-cyclopropane carboxylic acid, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of ethephon (2-chloroethyl)phosphonic acid and cyclanilide 1-(2,4-dichlorophenylaminocarbonyl)-cyclopropane carboxylic acid during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

These products are conditionally registered in accordance with FIFRA section 3(c)(7)(C). If the conditions are not complied with the registrations will be subject to cancellation in accordance with FIFRA section 6(e).

Consistent with section 3(c)(7)(C), the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on these conditional registrations is contained in an EPA Pesticide Fact Sheet on cyclanilide 1-(2,4-dichlorophenylaminocarbonyl)-cyclopropane carboxylic acid.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: June 25, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–17480 Filed 7-2-97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–749; FRL–5728–9]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–749, must be received on or before August 4, 1997.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Regulatory Action Leader Edward Allen, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 5th floor CS #1, 2800 Crystal Drive, Arlington, VA 22202. Telephone No. (703) 308-8699. e-mail: allen.edward@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–749] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in

electronic form must be identified by the docket number [PF–749] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 26, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Auxein Corporation

PP 7G4838

EPA has received a pesticide petition (7G4838) from Auxein Corporation, 3900 Collins Road, P. O. Box 27519, Lansing, MI, proposing pursuant to section 408 (d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. section 346a (d), to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of GABA in or on snap beans, peanuts, cotton, potatoes, tomatoes, lettuce, green peppers, spinach, broccoli, cauliflower, and cabbage. Pursuant to the section 408(d)(2)(A)(I) of the FFDCA, as amended, Auxein Corporation has submitted the following summary of information, data and arguments in support of their pesticide petition. This summary was prepared by Auxein Corporation and EPA has not fully evaluated the merits of the petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary was not clear that it reflected the conclusion of the petitioner and not necessarily EPA.

A. Proposed Use Practices

The proposed experimental program will be conducted in the states of Alabama, Arizona, California, Florida, Georgia, Idaho, Maine, Michigan, Minnesota, Mississippi, North Carolina, North Dakota, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Texas, Washington, and Wisconsin. Crops to be treated are snap beans, peanuts, cotton, potatoes, tomatoes, lettuce, green peppers, spinach, broccoli, cauliflower, and cabbage. Depending on the crop, application is made at first bloom, first bud or at the 5-6 leaf stage. Subsequent applications, for a maximum of three (3) applications, are at 1- to 3-week intervals. The rate range is 0.125 - 0.75 pounds of formulated product /acre per treatment not to exceed a maximum of 1.5 lbs/A per growing season. The proposed EUP program would utilize 462 pounds of active ingredients (231 pounds of gamma aminobutyric acid and 231 pounds of L-glutamic acid) in 793 pounds of formulated product. A total of 822 pounds of formulated product will be shipped. A maximum of 790 acres will be treated under this EUP. The formulated product, AuxiGro™ Plant Growth Enhancer, increases plant growth, yield and fruit quality.

B. Product Identity/Chemistry

AuxiGro WP is an off-white colored, wettable powder. AuxiGro contains two active ingredients: 36.5% L-glutamic acid, a key amino acid, and 29.2% gamma aminobutyric acid (GABA), a non-protein amino acid. GABA is a white, crystalline powder with a pH of 6.5 to 7.5. The pH of a 1% solution of AuxiGro is 4.4. The bulk density of the end-use formula is 0.52 g/ml. GABA is ubiquitous in nature and has been found in microorganisms, lower and higher plants, fish, birds, insects and mammals.

C. Toxicological Profile

GABA is a ubiquitous non-protein amino acid present in all living things. It is an inhibitory neurotransmitter in many brain regions and central nervous systems of mammals. Due to GABA's role in the nervous system, it has been administered to humans with the aim of improving central GABA-mediated transmission and to control Huntington's disease, Parkinson's disease, schizophrenia and other seizure states. AuxiGro, the end-use formula containing 29.2% GABA, has been studied for acute toxicity. Acute oral toxicity in rats is greater than 5,050 mg/kg. Acute dermal toxicity in rabbits is greater than 5,050 mg/kg. An eye irritation study using rabbits resulted in redness in one rabbit's unwashed eye, but cleared within 48 hours. Limited signs of dermal irritation cleared within 24 hours. There was no indication of dermal sensitization in a guinea pig dermal sensitization study.

D. Aggregate Exposure

In examining aggregate exposure, FQPA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures. The primary non-food sources of exposure the Agency considers include drinking water or groundwater, and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses.

1. *Dietary exposure.* Dietary exposure due to topical applications of GABA and glutamic acid is difficult to estimate because both chemicals are ubiquitous in nature; applications associated with the EUP would be minuscule compared to levels found in nature, and both are readily utilized by microorganisms. Furthermore, GABA and glutamic acid are presently available for direct human consumption.

2. *Non-dietary, non-occupational exposure.* Increased non-dietary exposure of GABA and glutamic acid via lawn care, topical insect repellents, etc., is not applicable to this EUP application.

E. Cumulative Exposure

GABA is ubiquitous in nature. Incremental levels of exposure resulting from this EUP program are minuscule when compared to the high levels of GABA found naturally-occurring in food.

F. Endocrine Disruptors

Auxein has no information to suggest that GABA will adversely affect the immune or endocrine systems.

G. Safety Considerations

GABA is available for human consumption as a food additive and pharmaceutical agent. It also occurs naturally in food. Incremental exposure to GABA resulting from this EUP program is minuscule. Considering the negligible contributions to the environment resulting from the application of AuxiGro, the abundance and role of GABA in foods and in the human body, it can be concluded that GABA is safe for the intended use, i.e., without measurable hazard.

H. Analytical Method

An analytical method for residues is not applicable as this proposes an exemption from the requirement for a tolerance.

I. Existing Tolerances

Auxein is not aware of any tolerances or MRLs issued for GABA outside of the United States.

2. Auxein Corporation

PP 7G4839

EPA has received a pesticide petition (7G4839) from Auxein Corporation, 3900 Collins Road, P. O. Box 27519, Lansing, MI, proposing pursuant to section 408 (d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. section 346a (d), to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of glutamic acid in or on snap beans, peanuts, cotton, potatoes, tomatoes, lettuce, green peppers, spinach, broccoli, cauliflower, and cabbage. Pursuant to the section 408 (d) (2) (A) (i) of the FFDCA, as amended, Auxein Corporation has submitted the following summary of information, data and arguments in support of their pesticide petition. This summary was prepared by Auxein Corporation and EPA has not fully evaluated the merits of the petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary was not clear that it reflected the conclusion of the petitioner and not necessarily EPA.

A. Proposed Use Practices

The proposed experimental program will be conducted in the states of Alabama, Arizona, California, Florida, Georgia, Idaho, Maine, Michigan, Minnesota, Mississippi, North Carolina, North Dakota, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Texas, Washington, and Wisconsin. Crops to be treated are snap beans, peanuts, cotton, potatoes, tomatoes, lettuce, green peppers, spinach, broccoli, cauliflower, and cabbage. Depending on the crop, application is made at first bloom, first bud or at the 5-6 leaf stage. Subsequent applications, for a maximum of three (3) applications, are at 1- to 3-week intervals. The rate range is 0.125 - 0.75 pounds of formulated product /acre per treatment not to exceed a maximum of 1.5 lbs/A per growing season. The proposed EUP program would utilize 462 pounds of active ingredients (231 pounds of gamma aminobutyric acid and 231 pounds of L-glutamic acid) in 793 pounds of formulated product. A total of 822 pounds of formulated product will be shipped. A maximum of 790 acres will be treated under this EUP. The formulated product, AuxiGrogG5TM Plant Growth Enhancer, increases plant growth, yield and fruit quality.

B. Product Identity/Chemistry

AuxiGro WP is an off-white colored, wettable powder. AuxiGro contains two active ingredients: 36.5% L-glutamic acid, a key amino acid, and 29.2% gamma aminobutyric acid (GABA), a non-protein amino acid. Glutamic acid is a white, practically odorless, free flowing crystalline powder. It is slightly soluble in water, forming acidic solutions. The pH of a 1% solution of AuxiGro is 4.4. The bulk density of the end-use formula is 0.52 g/ml. Glutamic acid is ubiquitous in nature and has been found in microorganisms, lower and higher plants, fish, birds, insects and mammals. Glutamate is widely available as a direct food additive and as a pharmaceutical agent. Glutamic acid is presently cleared by EPA for use as an inert ingredient in certain pesticide products.

C. Toxicological Profile

Glutamic acid is an ubiquitous and very abundant amino acid. It is found in virtually all proteins. Glutamic acid is listed as Generally Recognized as Safe the Food and Drug Administration (FDA) and is approved by the EPA as (GRAS) by an inert for seed treatment as a plant nutrient. Condensed, extracted fermentation glutamic acid is approved by the FDA for use in animal feed. Glutamic acid is highly regulated in man and other organisms, the mechanisms of which are well understood. Glutamate has been administered to numerous species in long term dietary studies without adverse effects. AuxiGro, the end-use formula, has been studied for acute toxicity. Acute oral toxicity in rats is greater than 5,050 mg/kg. Acute dermal toxicity in rabbits is greater than 5,050 mg/kg. An eye irritation study using rabbits resulted in redness in one rabbit's unwashed eye, but cleared within 48 hours. Limited signs of dermal irritation cleared within 24 hours. There was no indication of dermal sensitization in a guinea pig dermal sensitization study.

D. Aggregate Exposure

In examining aggregate exposure, FQPA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures. The primary non-food sources of exposure the Agency considers include drinking water or groundwater, and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

1. *Dietary exposure.* Dietary exposure due to topical applications of GABA and glutamic acid is difficult to estimate because both chemicals are ubiquitous in nature; applications associated with the EUP would be minuscule compared to levels found in nature, and both are readily utilized by microorganisms. Furthermore, GABA and glutamic acid are presently available for direct human consumption.

2. *Non-dietary, non-occupational exposure.* Increased non-dietary exposure of GABA and glutamic acid via lawn care, topical insect repellents, etc., is not applicable to this EUP application.

E. Cumulative Exposure

Glutamic acid is ubiquitous in nature. Incremental levels of exposure resulting from this EUP program are miniscule when compared to the high levels of glutamic acid found naturally-occurring in food.

F. Endocrine Disruptors

Auxein has no information to suggest that glutamic acid will adversely affect the immune or endocrine systems.

G. Safety Considerations

Glutamic acid is available for human consumption as a food additive and pharmaceutical agent. All food contains relatively high levels of glutamic acid. Incremental exposure resulting from this EUP program is minuscule. Considering the negligible contributions to the environment resulting from the application of AuxiGro, the abundance and role of glutamic acid in foods and in the human body, it can be concluded that glutamic is safe for the intended use, i.e., without measurable hazard.

H. Analytical Method

An analytical method for residues is not applicable as this proposes an exemption from the requirement for a tolerance.

I. Existing Tolerances

L-Glutamic acid is presently listed as exempt from tolerances under 40 CFR 180.1001 when used as a plant nutrient for seed treatment.

Auxein is not aware of any tolerances or MRLs issued for glutamic acid outside of the United States.

[FR Doc. 97–17590 Filed 7-2-97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–181048; FRL 5728–1]

Dimethomorph; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Georgia Department of Agriculture (hereafter referred to as the ''Applicant'') to use the pesticide dimethomorph (CAS 110488–0–5) to treat up to 93,500 acres of peppers, squash, cantaloupes, watermelons, tomatoes, and cucumbers to control crown rot. The Applicant proposes the use of a new (unregistered) chemical; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemptions.

DATES: Comments must be received on or before July 18, 1997.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–181048,'' should be submitted by mail to: Public Information and Records Integrity Branch, Information Resources and Services Division, (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail: Floor 2, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 308–9364; e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue specific exemptions for the use of dimethomorph on peppers, squash, cantaloupes, watermelons, tomatoes, and cucumbers to control crown rot. Information in accordance with 40 CFR part 166 was submitted as part of these requests.

Crown rot *Phytophthora capsici* is believed to have been introduced to the state of Georgia by hurricane Alberto in July of 1994. The Applicant states that presently, there are no fungicides registered in the U.S. that will provide adequate control of crown rot. The Applicant states that dimethomorph has been shown to be effective against crown rot. Dimethomorph holds current registrations throughout many European countries. The Applicant estimates that losses in 1997 could reach several hundred million dollars without use of dimethomorph. Under appropriate conditions, it is possible that this disease could develop to epidemic proportions.

The Applicant proposes to apply dimethomorph at a maximum rate of 0.225 lbs. active ingredient (a.i.,) [(2.5 lb. of product)] per acre, by ground or air, with a maximum of 5 applications per crop, to a maximum of 93,500 acres of peppers, squash, cantaloupes, watermelons, tomatoes, and cucumbers.

This notice does not constitute a decision by EPA on the application. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for opportunity for public comment on the application.

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–181048] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The official notice record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII format. All comments and data in electronic form must be identified by the docket number [OPP–181048]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Georgia Department of Agriculture.

List of Subjects

Environmental protection, Emergency exemptions, Pesticides and pests.

Dated: June 25, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–17481 Filed 7-2-97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2207]

Peitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

Petition for reconsideration have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to this petition must be filed July 18, 1997. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must

be filed within 10 days after the time for filing oppositions has expired.

Subject: Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service. (MM Docket No. 87–268).

Number of Petitions Filed: 220.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–17406 Filed 7–2–97; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 232–011507–003.

Title: Di Gregorio-Tricon Agreement.

Parties: Di Gregorio-Navegacao Ltda., DSR-Senator Lines, Cho Yang Shipping Col., Ltd.

Synopsis: The proposed modification extends the minimum term of the Agreement to September 1, 2000, and provides that any party may withdraw from the Agreement upon six months' written notice, but such notice may not commence to run until 30 months following September 1, 1997.

Agreement No.: 224–201028.

Title: Port of Oakland/Stevedoring Services of America Terminal Agreement.

Parties: Port of Oakland (''Port''), Stevedoring Services of America (''SSA'').

Synopsis: Under the terms of the Agreement, the Port assigns to SSA a preferential right to manage, operate, and solicit cargo at the Port's Charles B. Howard Terminal. The initial term of the Agreement will be from July 1, 1997, to June 30, 2007.

Dated: June 30, 1997.

By order of the Federal Maritime Commission.

Secretary.

[FR Doc. 97–17482 Filed 7–2–97; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. OIG Advisory Opinion Procedures and Preliminary Questions

Section 205 of the Health Insurance Portability and Accountability Act of 1996, Pub. Law 104–191, requires the Department to provide advisory opinions to the public regarding several categories of subject matter, including the requestor's potential liability under sections 1128, 1128A, and 1128B of the Act. The OIG has separately published in the **Federal Register** (2/19/97) and interim final regulation providing the procedure under which members of the public may request advisory opinions from the OIG. That discussion contains a more thorough discussion of the advisory opinion procedures and the preliminary questions. The procedures in the interim final rule include several provisions for the collection of information. In addition, in order to aid potential requestors and the OIG in providing opinions under this process, the OIG is providing preliminary questions that may be answered in an advisory opinion request. These preliminary questions will be voluntary and will correspond with each sanction provision about which advisory opinions will be rendered. *Responsents*: Health care providers; *Annaul Number of Respondents*: 500; *Average Burden per Response*: 10 hours; *Total Annual Burden on Respondents*: 5000 hours; *Cost Burden*: $1,000,000.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address:

Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street N.W., Washington, D.C. 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington, DC, 20201. Written comments should be received within 30 days of this notice.

Dated: June 24, 1997.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 97–17411 Filed 7–2–97; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meetings

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meetings.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Population-Specific Issues.

Times and Dates: 9:00 a.m.–5:00 p.m., July 21, 1997.

Place: Room 337A, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, D.C. 20201.

Status: Open.

Purpose: On July 21, the Subcommittee on Population-Specific Issues of the National Committee on Vital and Health Statistics will meet to formulate its work plan relating to data needed to assess the impact of Medicaid Managed Care on Medicaid beneficiaries. Presentations are tentatively planned on the following topics: the scope of current activities, anticipated work across the agencies within the Department, and plans for monitoring and evaluating the impact of managed care on Medicaid beneficiaries, including child health and mental health. The Subcommittee plans to formulate specific questions to be addressed and resources needed, as well as methods to addressing this priority, including the possibility of public hearings.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and roster of committee members may be obtained from Carolyn Rimes, Lead Staff for the Subcommittee, Health Care Financing Administration, 7500 Security Boulevard, Baltimore Maryland 21244, telephone (410) 786–6620, or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–7050. Information also is available on the NCVHS home page of the HHS website: http://aspe.os.dhhs.gov/ncvhs.

Dated: June 27, 1997.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 97–17410 Filed 7–2–97; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–685, and HCFA–684 A–J]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* End Stage Renal Disease (ESRD) Network Semi-Annual Cost Report Forms and Supporting Regulations 42 CFR 405.2110 and 405.2112; *Form No.:* HCFA–685; *Use:* The Semi-annual cost report enables HCFA to review specific Network costs, compare costs between Networks, and project future Network costs. The reports are also used as an early warning system to determine if a Network is in danger of exceeding the total cost of its contract. *Frequency:* Semi-annually; *Affected Public:* Not-for-profit institutions; *Number of Respondents:* 18; *Total Annual Responses:* 36; *Total Annual Hours:* 108.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* End Stage Renal Disease Network (ESRD) Business Proposal Forms; *Form No.:* HCFA–684 through 684 A–J; *Use:* Current End Stage Renal Disease (ESRD) Networks and other bidders are required to submit contract proposals to participate as a HCFA sanctioned ESRD Network. The business proposal forms are used to satisfy HCFA's need for consistent, meaningful, and verifiable data to evaluate contract proposals. *Frequency:* Every three years; *Affected Public:* Not-for-profit institutions; *Number of Respondents:* 18; *Total Annual Responses:* 36; *Total Annual Hours:* 1,080.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's Web Site Address at http://www.hcfa.gov/regs/prdact95.htm, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Analysis and Planning Staff, Attention: John Rudolph, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 26, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources.

[FR Doc. 97–17434 Filed 7–2–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards, To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratory, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7875 (formerly: Bayshore Clinical Laboratory)

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/334–263–5745

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787/800–242–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

CompuChem Laboratories, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–549–8263/800–833–3984, (Formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093, (formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, PO Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045/847–688–4171

Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 941–418–1700/800–735–5416

Doctors Laboratory, Inc., PO Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180/206–386–2672, (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., PO Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300 (formerly: Harrison & Associates Forensic Laboratories)

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051

LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927/800–728–4064 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.,)

Laboratory Corporation of America, 888 Willow St., Reno, NV 89502, 702–334–3400 (formerly: Sierra Nevada Laboratories, Inc.,)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.,)

Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–392–7961

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/800–526–6339

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–381–5213

Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244/612–636–7466

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587

Methodist Medical Center Toxicology Laboratory, 221 NE Glen Oak Ave., Peoria, IL 61636, 800–752–1835/309–671–5199

MetroLab-Legacy Laboratory Services, 235 N. Graham St., Portland, OR 97227, 503–413–4512, 800–237–7808 (x4512)

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134

Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400/800–541–7891

PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 415–328–6200/800–446–5177

PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294, (formerly: Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–338–4070/800–821–3627

Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600/800–882–7272

Premier Analytical Laboratories, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784/800–888–4063, (formerly: Drug Labs of Texas)

Presbyterian Laboratory Services 1851 East Third Street, Charlotte, NC 28204, 800–473–6640

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–526–0947/972–916–3376 (formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 800–574–2474/412–920–7733, (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120, (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888, (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)

Quest Diagnostics Incorporated, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293/314–991–1311, (formerly: Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)

Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590, (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)

Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485, (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)

Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728/619–686–3200, (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)

Scientific Testing Laboratories, Inc. 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130

Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800–749–3788

S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–727–8800 / 800–999-LABS

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520 / 800–877–2520

SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006, (formerly: Doctors & Physicians Laboratory)

SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590, (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 847–447–4379/800–447–4379 (formerly: International Toxicology Laboratories)

SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–523–0289 / 610–631–4600, (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301, (formerly: SmithKline Bio-Science Laboratories)

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176

Southwest Laboratories, 2727 W. Baseline Rd., Suite 6, Tempe, AZ 85283, 602–438–8507

St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee St., Oklahoma City, OK 73102, 405–272–7052

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260

TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373 / 800–966–2211, (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.)

UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800 / 818–996–7300, (formerly: MetWest-BPL Toxicology Laboratory)

UTMB Pathology-Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197

The Standards Council of Canada (SCC) Laboratory Accreditation Program for Substances of Abuse (LAPSA) has been given deemed status by the Department of Transportation. The SCC has accredited the following Canadian laboratory for the conduct of forensic urine drug testing required by Department of Transportation regulations:

MAXXAM Analytics Inc., 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (formerly: NOVAMANN (Ontario) Inc.)

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 97–17375 Filed 7–2–97; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–10]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: July 3, 1997.

FOR FURTHER INFORMATION CONTACT:

Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.) HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess an surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: June 26, 1997.

Fred Karnas, Jr.,

Acting Deputy Assistant Secretary for Economic Development.

[FR Doc. 97–17155 Filed 7–2–97; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Stephen Oliver, Leawood, KS, PRT–831077.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Lonnie Cottam, Blythe, CA, PRT–829685.

The applicant request a permit to import the sport-hunted trophy of a cheetah (*Acinonyx jubatus*) taken in Namibia for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application(s) for permits to conduct certain activities with marine mammals. The application(s) was/were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

The following applicants have each requested a permit to import a sport-hunted polar bear (*Ursus maritimus*) from the Northwest Territories, Canada for personal use.

Applicant/address	Population	PRT–
Gary Dumdei, Grand Rapids, MN	Southern Beaufort	829908
Kenneth Sandy, Snohomish, WA	.....do	830978
Jose Carbonell, Miami, FL	.....do	831228
Kenneth Werling, Celina, OH	.....do	830535
Felix Widlacki, Orland Park, IL	McClintock Channel	831166

Written data or comments, requests for copies of the complete applications, or requests for a public hearing on any of these applications for marine mammal permits should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 430, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate.

The holding of such hearing is at the discretion of the Director.

Documents and other information submitted with all of the applications listed in this notice are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice at the above address.

Dated: June 27, 1997.

Karen Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–17448 Filed 7–2–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits for Marine Mammals

On March 26, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 58, Page 14438, that an application had been filed with the Fish and Wildlife Service by each of the following individuals for a permit to import a sport-hunted polar bear (*Ursus maritimus*) from Canada for personal use.

Applicant/address	Population	PRT–
Torry D. Lofgreen, Tempe, AZ	Southern Beaufort	826751
Anthony Kozyrski, Kings Park, NY	.....do	826752
Lee Lipscomb, Los Angeles, CA	Northern Beaufort	826746
Richard Haskins, Hillsborough, CA	.....do	826742
Larry Bennett, Stewartstown, PA	.....do	826739

On April 24, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 79, Page 20020, that an application had been filed with the Fish and Wildlife Service by each of the following individuals for a permit to import a sport-hunted polar bear (*Ursus maritimus*) from Canada for personal use.

Applicant/address	Population	PRT–
James Gall, Shelby, MI	Northern Beaufort	828117
John Garrett, Sulphur, KY	.....do	827772
Horst Baier, Miami, FL	.....do	828003
Robert Deligans, Sherman, TX	.....do	828114
Ken Semelsberger, Strongsville, OH	McClintock Channel	827520
George Heller, Webster City, IA	Viscount Melville	827517
Philip Majerus, Fond du Lac, WI	Southern Beaufort	827892

On April 30, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 83, Page 23478, that an application had been filed with the Fish and Wildlife Service by each of the following individuals for a permit to import a sport-hunted polar bear (*Ursus maritimus*) from Canada for personal use.

Applicant/address	Population	PRT–
Thomas Vanevery, Troy, MI	McClintock Channel	828440

Notice is hereby given that on June 18, 1997, and June 24, 1997 as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permits subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 430, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: June 27, 1997.

Karen Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–17447 Filed 7–2–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of proposed Cooperative Research and Development Agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is planning to enter into a Cooperative Research and Development Agreement (CRADA) with Application Software Technologies, Inc., Green Bay, Wisconsin. The purpose of the CRADA is to jointly research and develop Spatial Data Transfer Standard development tools for the Windows environment. Any other organization interested in pursuing the possibility of a CRADA for similar kinds of activities should contact the USGS.

ADDRESSES: Inquiries may be addressed to the Acting Chief of Research, U.S. Geological Survey, National Mapping Division, 500 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192; Telephone (703) 648–4643, facsimile (703) 648–4706; Internet ''ebrunson@usgs.gov''.

FOR FURTHER INFORMATION CONTACT: Ernest B. Brunson, address above.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: June 25, 1997.

Richard E. Witmer,

Acting Chief, National Mapping Division.

[FR Doc. 97–17429 Filed 7–2–97; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–084–97–6333–00; G7–0226]

Emergency Closure of Public Lands; Clackamas Co., Oregon

ACTION: Emergency Closure of Public Lands; Clackamas County, Oregon.

SUMMARY: Notice is hereby given that certain public lands in Clackamas County, Oregon are temporarily closed to all vehicle operation from July 7, 1997 until the Salem District Off Highway Vehicle management plan is implemented. The closure is made under the authority of 43 CFR 8364.1.

The public lands affected by this emergency closure are specifically identified as follows:

1. All lands administered by the Bureau of Land Management in Section 36 of T.5 S., R.4 E., Willamette Meridian, Oregon, except roads 5–4E–25, 5–4E–36, and 5–4E–36.1,2,3, and 4.

2. All lands administered by the Bureau of Land Management in Section 14 of T.5 S., R.4 E., Willamette Meridian, Oregon, except roads 4–4E–24, 5–4E–12, 5–4E–12.1, 5–4E–14.4, 5–4E 14.2, 5–4E–23, and the first .3 mile of 5–4E–14.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: Bureau employees; state, local and federal law enforcement and fire protection personnel; the holders of BLM road use permits that include roads within the closure area. Access by additional parties may be allowed but must be approved in advance in writing by the Authorized Officer.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7, which include a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months, as well as the penalties provided under Oregon State law.

The public lands and roads temporarily closed to public use under this order will be posted with signs and maps at points of public access.

The purpose of this closure is:

1. To protect sensitive riparian/aquatic resources and wildlife species. Off-highway vehicle use is causing unacceptable damage to wildlife and botanical habitat.

2. To protect riparian resources in and adjacent to Clear Lake. Illegal garbage dumping, vegetation removal, and off-highway vehicle use are causing unacceptable resource damage.

DATES: This closure is effective from July 7, 1997, until the Salem District Off Highway Vehicle management plan is implemented.

ADDRESSES: Copies of the closure order and maps showing the location of the closed lands and roads are available from the Salem District, 1717 Fabry Road SE, Salem, OR 97306.

FOR FURTHER INFORMATION CONTACT: Richard C. Prather, Cascades Area Manager, Salem District Office, at (503) 375–5646.

Dated: July 1, 1997.

Richard C. Prather,

Cascades Area Manager.

[FR Doc. 97–17497 Filed 7–2–97; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–060–07–1050–03]

Closure of Whoopup Canyon Petroglyph Site, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency closure of Whoopup Canyon Petroglyph Site Area of Critical Environmental Concern (ACEC) to All Uses Except Scientific and Sociocultural.

SUMMARY: Notice is hereby given that effective immediately, Whoopup Canyon Petroglyph Site ACEC, located in Weston County, Wyoming, on public land administered by the BLM, Casper District, Newcastle Resource Area, is closed to all uses except scientific and sociocultural and those specified in the ''Whoopup Canyon Petroglyph Site Management Plan,'' available from the BLM Newcastle Resource Area. This action is taken to protect world class petroglyphs and associated cultural resources which date from 11,500 years before present to late prehistoric times. Individuals or institutions wanting access to the Whoopup Canyon ACEC for scientific research must apply for a cultural resource research permit to the Wyoming State Office of the BLM. Individuals or institutions wanting access to the ACEC for sociocultural uses must request access from the BLM authorized officer (BLM Newcastle Resource Area Manager).

EFFECTIVE DATE: This closure will be effective upon publication of this notice. The closure will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Area Manager, or Alice M. Tratebas, Archeologist, Newcastle Resource Area, 1101 Washington Blvd., Newcastle, Wyoming 82701. Telephone: (307) 746–4453.

SUPPLEMENTARY INFORMATION: The Newcastle Resource Area is responsible for the management of sensitive, fragile cultural resources in the Whoopup Canyon petroglyph site ACEC. All but a very few petroglyphs in the ACEC have been damaged by past unsupervised visitor use. The damage has increased during the past 50 years at an exponential rate. Whoopup Canyon is a nationally and internationally significant petroglyph site. It is the only known site in North America that has such an extensive record of Paleo-Indian petroglyphs. It has the longest continuous tradition of rock art known in North America. These cultural resources are protected under the Archaeological Resources Protection Act of 1979 as amended, the National Historic Preservation Act of 1966 as amended, the Federal Land Policy and Management Act of 1976, and the American Indian Religious Freedom Act of 1978.

Authority for closure orders is provided under 43 CFR subpart 8364.1.

Dated: June 27, 1997.

Gary Johnson,

Area Manager.

[FR Doc. 97–17510 Filed 7–2–97; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–050–1220–00]

Front Range Resource Advisory Council (Colorado) Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix, notice is hereby given that the next meeting of the Front Range Resource Advisory Council (Colorado) will be held on July 17, 1997 in Canon City, Colorado. The meeting is scheduled to begin at 9:15 a.m. at the Bureau of Land Management's(BLM) Canon City District Office, 3170 East Main Street, Canon City, Colorado. The meeting will focus on developing recreation guidelines.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council at 9:30 a.m. or written statements may be submitted for the Council's consideration. The District Manager may limit the length of oral presentations depending on the number of people wishing to speak.

DATES: The meeting is scheduled for Thursday July 17, 1997 from 9:15 a.m. to 4 p.m.

ADDRESSES: For further information, contact Ken Smith, Bureau of Land Management (BLM), Canon City District Office, 3170 East Main Street, Canon City Colorado 81212; Telephone (719) 269–8500; TDD (719) 269–8597.

SUPPLEMENTARY INFORMATION: Summary minutes for the Council meeting will be maintained in the Canon City District Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 97–17506 Filed 7–2–97; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–932–1310–01; NMNM 94194]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of Pub. L. 97–451, a petition for reinstatement of Oil and Gas Lease NMNM 94194, Lea County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from July 1, 1996, the date of termination.

No valid lease has been issued affecting the land. The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, and 16⅔ percent, respectively. The lessee has paid the required $500.00 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

The lessee has met all the requirements for reinstatement of the lease as set in Section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective July 1, 1996, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Angela Trujillo, BLM, New Mexico State Office, (505) 438–7592.

Dated: June 25, 1997.

Angela Trujillo,

Land Law Examiner, Fluids Adjudication Team.

[FR Doc. 97–17504 Filed 7–2–97; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–931–1430–01; N–24807]

Public Land Order No. 7274; Revocation of Public Land Order No. 5784; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order that withdrew 69.75 acres of public land for the United States Geological Survey to use as a geophysical observatory site. The land is no longer needed for the purpose for which it was withdrawn. This action will open the land to surface entry and mining. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: August 4, 1997.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702–785–6532.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 5784, which withdrew public land for the United States Geological Survey to use as a geophysical observatory site, is hereby revoked in its entirety:

Mount Diablo Meridian

T. 19 N., R. 53 E.,
Sec. 26, lot 7 and NE¼SE¼.

The area described contains 69.75 acres in Eureka County.

2. At 9 a.m. on August 4, 1997, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. August 4, 1997 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on August 4, 1997, the land shall be opened to mineral location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: June 24, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–17502 Filed 7–2–97; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–1430–01; WYW 71191–02]

Public Land Order No. 7275; Opening of Land, Under Section 24 of the Federal Power Act, in the Secretarial Order Dated July 16, 1934, Which Established Powersite Classification No. 286; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order opens 4.70 acres of National Forest System land in Powersite Classification No. 286, subject to the provisions of Section 24 of the Federal Power Act. This order will permit consummation of a pending land sale and retain the waterpower rights to the United States. The land has been and will continue to be open to mining under the provisions of the Mining Claims Rights Restoration Act of 1955, and to mineral leasing.

EFFECTIVE DATE: July 3, 1997.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6115.

By virtue of the authority vested in the Secretary of the Interior by the Act

of June 10, 1920, Section 24, as amended, 16 U.S.C. 818 (1994), and pursuant to the determination by the Federal Energy Regulatory Commission in DVWY–191, it is ordered as follows:

1. At 9 a.m., on July 3, 1997, the following described National Forest System land withdrawn by the Secretarial Order dated July 16, 1934, which established Powersite Classification No. 286, will be opened to such forms of disposition as may by law be made of National Forest System land subject to the provisions of Section 24 of the Federal Power Act, and subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law:

Sixth Principal Meridian

Bridger-Teton National Forest

T. 39 N., R. 115 W.,
Tract C of HES 190.

The area described contains 4.70 acres in Teton County.

2. The land has been and remains open to location and entry under the United States mining laws, subject to the provisions of the Act of August 11, 1955, 30 U.S.C. 621 (1994), and to applications and offers under the mineral leasing laws.

Dated: June 24, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–17501 Filed 7–2–97; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1492–00; NMNM96543]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Sierra County, New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Correction.

SUMMARY: In notice document 97–2214 beginning on page 4322 in the issue of Wednesday, January 29, 1997, make the following correction:

Under the **SUMMARY** heading, the legal description should be changed to read:

T. 16 S., R. 7 W., NMPM

Sec. 10, SW¼SW¼NW¼SW¼.

Containing 2.5 acres, more or less.

This notice also terminates R&PP Classification on the land erroneously listed in notice document 97–2214. The land will be opened to the public land laws generally, including the mining laws.

DATES: Comments regarding the proposed conveyance or classification must be submitted on or before August 18, 1997.

ADDRESSES: Comments should be sent to the BLM, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Bernie Creager at the address above or at (505) 525–4325.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal Register**, the SW¼SW¼NW¼SW¼, sec. 10, T. 16 S., R. 7 W., New Mexico Principal Meridian, New Mexico will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the R&PP Act, as amended.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The land will not be offered for purchase until after the classification becomes effective.

On Wednesday, January 29, 1997, in Notice document 97–2214, the NW¼SW¼NW¼SW¼, sec. 10, T. 16 S., R. 7 W., New Mexico Principal Meridian, New Mexico, was erroneously identified for classification pursuant to the R&PP Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*). The classification which became effective March 30, 1997, was erroneous and is hereby terminated in accordance with regulations contained in 43 CFR 2461.5(b)(2).

At 8 a.m. on August 4, 1997, the NW¼SW¼NW¼SW¼, sec. 10, T. 16 S., R. 7 W., New Mexico Principal Meridian, New Mexico, will be opened to the operation of the public land laws, subject to valid existing rights and the requirements of applicable laws. All applications received prior to or at 8 a.m. on August 4, 1997 will be considered as simultaneously filed. All other applications received will be considered in the order of filing.

Dated: June 25, 1997.

Linda S. C. Rundell,

District Manager.

[FR Doc. 97–17499 Filed 7–2–97; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–07–1220–00; 8371]

Arizona: Long-Term Visitor Area Program for 1997–1998 and Subsequent Use Seasons; Revision to Existing Supplementary Rules, Yuma Field Office, Arizona, and California Desert District, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Publication of supplementary rules for Long-Term Visitor Areas within the California Desert District, El Centro Resource Area.

SUMMARY: The Bureau of Land Management (BLM) Yuma Field Office and California Desert District announce revisions to the Long-Term Visitor Area (LTVA) Program. The program, which was instituted in 1983, established designated LTVAs and identified an annual long-term use season from September 15 to April 15. During the long-term season, visitors who wish to camp on public lands in one location for extended periods must stay in the designated LTVAs and purchase an LTVA permit.

EFFECTIVE DATE: September 15, 1997.

FOR FURTHER INFORMATION CONTACT: Mark Lowans, Outdoor Recreation Planner, Yuma Field Office, 2555 East Gila Ridge Road, Yuma, Arizona 85365, telephone (520) 317–3210; or Mark Conley, Outdoor Recreation Planner, Palm Springs-South Coast Resource Area, 690 West Garnet Avenue, North Palm Springs, California 92258, telephone (760) 251–4800; or Jeff Kowalczyk, Outdoor Recreation Planner, El Centro Resource Area, 1661 South Fourth Street, El Centro, California 92243, telephone (760) 337–4400.

SUPPLEMENTARY INFORMATION: The purpose of the LTVA program is to provide areas for long-term winter camping use. The sites designated as LTVAs are, in most cases, the traditional use area of long-term visitors. Designated sites were selected using criteria developed during the land management planning process, and environmental assessment were completed for each site location.

The program was established to safely and properly accommodate the

increasing demand for long-term winter visitation and to provide natural resource protection through improved management of this use. The designation of LTVAs assures that specific locations are available for long-term use year after year, and that inappropriate areas are not used for extended periods.

Visitors may camp without an LTVA permit outside of LTVAs, on public lands not otherwise posted or closed to camping, for up to 14 days in any 28-day period.

Authority for the designation of LTVAs is contained in Title 43, Code of Federal Regulations, Subpart 8372, Sections 0–3 and 0–5(g). Authority for the establishment of an LTVA program is contained in Title 43, Code of Federal Regulations, Subpart 8372, Section 1, and for the payment of fees in Title 36, Code of Federal Regulations, Subpart 71. The authority for establishing supplementary rules is contained in Title 43, Subpart 8365, Section 1–6. The LTVA supplementary rules have been developed to meet the goals of individual resource management plans. These rules will be available in each local office having jurisdiction over the lands, sites, or facilities affected, and will be posted near and/or within the lands, sites, or facilities affected. Violations of supplementary rules are punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months.

The following are the supplemental rules for the designated LTVAs and are in addition to rules to conduct set forth in Title 43, Code of Federal Regulations, Subpart 8365, Section 0.1 through 1–7.

The following supplemental rules apply year-long to all public land users who enter the LTVAs.

1. The Permit. A permit is required to camp in a designated LTVA between September 15 and April 15. The permit authorizes the permittee to camp within any designated LTVA using those camping or dwelling unit(s) indicated on the permit between the period from September 15 to April 15. There are two types of permits: Long-term and short-visit. The long-term permit fee is $100.00, U.S. funds only, for the entire season and any part of the season. The short-term permit is $20.00 for seven (7) consecutive days. The short-visit permit may be renewed an unlimited number of times for the cost of $20.00 for seven consecutive days. *No refunds are made on permit fees.*

2. The Permit. To be valid, the short-visit permit or long-term permit decal must be affixed at the time of purchase, with the adhesive backing, to the bottom right-hand corner of the windshield of all transportation vehicles and in a clearly visible location on all camping units. A maximum of two (2) secondary vehicles is permitted.

3. Permit Transfers. The permit may not be reassigned or transferred by the permittee.

4. Permit Revocation. An authorized BLM officer may revoke, without reimbursement, any LTVA permit issued to any person when the permittee violates any BLM rule or regulation, or when the permittee, permittee's family, or guest's conduct is inconsistent with the goal of BLM's LTVA Program. Failure to return any LTVA permit to an authorized BLM officer upon demand is a violation of this supplemental rule. Any permittee whose permit is revoked must remove all property and leave the LTVA system within 12 hours of notice. The revoked permittee will not be allowed into any other LTVA in Arizona or California for the remainder of the LTVA season.

5. Unoccupied Camping Units. Camping units or campsites must not be left unoccupied within any LTVA for periods of greater than 5 days unless approved in advance by an authorized BLM officer.

6. Parking. For your safety and privacy, you must maintain a minimum of 15 feet of space between dwelling units.

7. Removal of Wheels and Campers. Campers, trailers, and other dwelling units must remain mobile. Wheels must remain on all wheeled vehicles. Pickup campers may be set on jacks manufactured for that purpose.

8. Quiet Hours. Quiet hours are from 10 p.m. to 6 a.m. in accordance with applicable state time zone standards.

9. Noise. Operation of audio devices or motorized equipment, including generators, in a manner that makes unreasonable noise as determined by the authorized BLM officer is prohibited. Amplified music is allowed only within La Posa and Imperial Dam LTVAs and only in locations designated by BLM or when approved in advance by an authorized BLM officer.

10. Access. Do not block roads or trails commonly in public use with your parked vehicles, stones, wooden barricades, or by any other means.

11. Structures and Landscaping. Fixed structures of any type are restricted and must conform to posted policies. This includes, but is not limited to fences, dog runs, storage units, and windbreaks. Alterations to the natural landscape are not allowed. Painting rocks or defacing or damaging any natural or archaeological feature is prohibited.

12. Livestock. Boarding of livestock (horses, cattle, sheep, goats, etc.) within LTVA boundaries is permitted only when approved in advance by an authorized BLM officer.

13. Pets. Pets must be kept on a leash at all times. Keep an eye on your pets. Unattended and unwatched pets may fall prey to coyotes or other desert predators. Pet owners are responsible for clean-up and sanitary disposal of pet waste.

14. Cultural Resources. do not disturb any archaeological or historical values including, but not limited to, petroglyphs, ruins, historic buildings, and artifacts that may occur on public lands.

15. Trash. Place all trash in designated receptacles. Public trash facilities are shown in the LTVA brochure. Depositing trash or holding-tank sewage in vault toilets is prohibited. An LTVA permit is required for trash disposal within all LTVA campgrounds except for the Mule Mountain LTVA. The changing of motor oil, vehicular fluids, or disposal and possession of these used substances within an LTVA is strictly prohibited.

16. Dumping. Absolutely no dumping of sewage, gray water, or garbage on the ground. This includes motor oil and any other waste products: Federal, state, and county sanitation laws and county ordinances specifically prohibit these practices. Sanitary dump station locations are shown in the LTVA brochure. LTVA permits are required for dumping within all LTVA campgrounds except for the Midland LTVA.

17. Self-Contained Vehicles. In Pilot Knob, Dunes Vista, Midland, Tamarisk, and Hot Springs LTVAs, camping is restricted to self-contained camping units only. Self-contained units must have a permanent affixed waste water holding tank of 10-gallon minimum capacity. Port-a-potty systems, or systems which utilize portable holding tanks, or permanent holding tanks of less than 10-gallon capacity are not considered to be self-contained. The La Posa, Imperial Dam, and Mule Mountain LTVAs are restricted to self-contained camping units, except within 500 feet of a vault or rest room.

18. Campfires. Campfires are permitted in LTVAs subject to all local, state, and Federal regulations. Comply with posted rules.

19. Wood Collection. No wood collection is permitted within the LTVAs. A maximum of 1 cubic yard (3′×3′×3′) of firewood will be allowed per individual or group campfire at any one time. Please contact the nearest BLM office for current regulations concerning wood collection.

20. Speed Limit. The speed limit in LTVAs is 15 m.p.h. or as otherwise posted.

21. Off-Highway Vehicle Use. Motorized vehicles must remain on existing roads, trails, and washes.

22. Vehicle Use. It is prohibited to operate any vehicle in violation of state or local laws and regulations relating to use, standards, registration, operation, and inspection.

23. Firearms. The discharge or use of firearms or weapons is prohibited inside or within ½ mile of the LTVAS.

24. Vending Permits. Any commercial activity requires a vending permit. Please contact the nearest BLM office for information on vending or concession permits.

25. Aircraft Use. Landing or taking off of aircraft, including ultralights and hot air balloons, is prohibited in LTVAs.

26. Perimeter Camping. No camping is allowed within 1 mile of the Hot Spring, Tamarisk, and Pilot Knob LTVA boundaries.

27. Hot Spring Spa and Day Use Area: Food, beverages, glass containers, soap, and pets are prohibited within the fenced-in area at the Hot Springs Spa. Day use hours are 5 a.m. to midnight.

28. Mule Mountain LTVA. All camping within Wiley's Well and Coon Hollow campgrounds is restricted to designated sites only and is limited to one (1) camping or dwelling unit per site.

29. Imperial Dam and La Posa LTVAS. Overnight occupancy is prohibited in desert washes in Imperial Dam and La Posa LTVAs.

30. La Posa LTVA. Access to La Posa LTVA is restricted to legal access roads along U.S. Highway 95. Construction and sue of other access points are prohibited. This includes removal or modification of barricades, such as fences, ditches, and berms.

31. Posted Rules. Observe all posted rules. Individual LTVAs may have additional specific rules. If posted rules differ from these supplemental rules, the posted rules take precedence.

32. Other Laws. LTVA holders are required to observe all Federal, state, and local laws and regulations applicable to the LTVA and shall keep the LTVA and, specifically, their campsite, in a neat, orderly, and sanitary condition.

33. Length of Stay. Length of stay in an LTVA between April 16 and September 14 is limited to 14 days in a 28-day period. After the 14th day of occupation campers must move outside of a 25-mile radius of the previous location.

This notice is published under the authority of Title 43, Code of Federal Regulations, Subpart 8365, Section 1–6.

Dated: June 23, 1997.

Gail Acheson,

Field Manager, Yuma Field Office.

Julia Dougan,

Area Manager, Palm Springs-South Coast Resource Area.

Terry A. Reed,

Area Manager, El Centro Resource Area.

[FR Doc. 97–17503 Filed 7–2–97; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1430–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. June 24, 1997.

The plat representing the dependent resurvey of a portion of the Boise Barracks Military Reservation in T. 3 N., R. 2 E., Boise Meridian, Idaho, Group 981, was accepted, June 24, 1997.

This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709–1657.

Dated: June 24, 1997.

Duane E. Olsen,

Chief, Cadastral Surveyor for Idaho.

[FR Doc. 97–17430 Filed 7–2–97; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1030–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. June 24, 1997.

The plat representing the corrective dependent resurvey of a portion of the subdivisional lines and the subdivision of section 8, T. 48 N., R. 2 E., Boise Meridian, Idaho, Group 859, was accepted, June 24, 1997.

This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

Dated: June 24, 1997.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 97–17431 Filed 7–2–97; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Memorial Commission; Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission will be held on Tuesday, July 29, 1997, at 1 p.m., at the National Building Museum, Room 312, 5th and F Streets, NW.

The Commission was established by Public Law 99–652, the Commemorative Works Act, for the purpose of preparing and recommending to the Secretary of the Interior; Administrator, General Services Administration; and Members of Congress broad criteria, guidelines, and policies for memorializing persons and events on Federal lands in the National Capital Region (as defined in the National Capital Planning Act of 1952, as amended), through the media of monuments, memorials and statues. It is to examine each memorial proposal for adequacy and appropriateness, make recommendations to the Secretary and Administrator, and to serve as information focal point for those persons seeking to erect memorials on Federal land in the National Capital Region.

The members of the Commission are as follows:

Director, National Park Service
Chairman, National Capital Planning Commission
The Architect of the Capitol
Chairman, American Battle Monuments Commission
Chairman, Commission of Fine Arts
Mayor of the District of Columbia
Administrator, General Services Administration
Secretary of Defense

The purpose of the meeting will be to discuss currently authorized and proposed memorials in the District of Columbia and environs.

The meeting will be open to the public. Any person may file with the Commission a written statement

concerning the matters to be discussed. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact the Commission at (202) 619–7097. Minutes of the meeting will be available for public inspection 4 weeks after the meeting at the Office of Stewardship and Partnerships, National Capital Support Office, 1100 Ohio Drive, SW., Room 220, Washington, DC 20242.

Dated: June 18, 1997.

Einan S. Olsen,

Acting Regional Director, National Capital Region.

[FR Doc. 97–17472 Filed 7–2–97; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before August 4, 1997.

ADDRESSES: Comments on this information collection should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior, (1006–0015), Washington, D.C. 20503, Telephone (202) 395–7340. A copy of your comments should also be directed to the Bureau of Reclamation, D–7924, P.O. Box 25007, Denver, Colorado 80225–0007.

FOR FURTHER INFORMATION CONTACT: Bureau of Reclamation's Information Collection Officer, Susan Rush, at (303) 236–0305 extension 462 or by Internet at infocoll@usbr.gov.

SUPPLEMENTARY INFORMATION:

Title: Diversions, return flow, and consumptive use of Colorado River water in the lower Colorado River basin.

Abstract: The Bureau of Reclamation is required to maintain detailed and accurate records of diversions, return flow, and consumptive use of Colorado River water in the lower Colorado River basin. This information is being collected to provide the Secretary of the Interior with the data necessary to effectively manage the lower Colorado River and to comply with the decree by the Supreme Court of the United States in *Arizona* v. *California et al.*, dated March 9, 1964. The data will also be used to safeguard existing and future entitlements by allowing the Secretary of the Interior to monitor water use and take action to ensure that water users make reasonable beneficial use of all water consumptively used and that they do not exceed entitlements. Response to this request is required for a water user to obtain a benefit in accordance with the Boulder Canyon Project Act and to comply with the water user's contract for delivery of water service.

Bureau Form Numbers: LC–72, LC–72A, and LC–72B.

OMB Approval Number: 1006–0015.

Frequency: Annually, or otherwise as determined by the Secretary of the Interior.

Description of Respondents: The Lower Basin States (Arizona, California, and Nevada), local and tribal entities, water districts, and individuals that use Colorado River water.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 6 hours per respondent.

Estimated Number of Respondents: 37.

Estimated Total Annual Burden on Respondents: 225 hours.

Reclamation will display a valid OMB control number on the forms. Persons who are required to respond to the information collection need not respond unless the OMB control number is current.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration. The public is being requested to comment on:

a. Whether the collection of information is necessary for the proper performance of the functions of Reclamation, including whether the information will have practical utility;

b. The accuracy of Reclamation's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

c. The quality, utility, and clarity of the information to be collected; and

d. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Reclamation's intention to seek renewal of this information collection and a request for public comment was published in **Federal Register** notice 62 FR 16605, Apr. 7, 1997. No comments were received in response to this notice.

Dated: June 19, 1997.

Jack C. Pong,

Director, Management Services Office, Lower Colorado Region.

[FR Doc. 97–17423 Filed 7–2–97; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

Proposed Addendum to Investigation No. 1205–3; Certain Phenols—Metacresol, Orthocresol, Paracresol, and Metaparacresol

AGENCY: International Trade Commission.

ACTION: Request for comment.

SUMMARY: The Commission requests comment with respect to a request from the United States Trade Representative (USTR) to provide advice concerning a proposed addendum to Commission Investigation No. 1205–3 affecting the tariff treatment of certain phenols—metacresol, orthocresol, paracresol, and metaparacresol having a purity of less than 75 percent (under 75 percent cresols) provided for in subheading 2707.60.20 of the Harmonized Tariff Schedule of the United States (HTS).

EFFECTIVE DATE: June 30, 1997.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, Office of Tariff Affairs & Trade Agreements (O/TA&TA) (202/205–2592) or Fred Schottman, Nomenclature Analyst, O/TA&TA, (202/205–2077), U.S. International Trade Commission, Washington, DC 20436. The O/TA&TA fax number is: 202/205–2616. Messrs. Rosengarden and Schottman may also be reached via Internet e-mail at erosengarden@usitc.gov and fschottman@usitc.gov, respectively.

Background

Section 1205 of the Omnibus Trade and Competitiveness Act of 1988 directs the U.S. International Trade Commission (Commission) to conduct studies and make recommendations on modifications to the HTS. In August 1993, the Commission issued a report *Proposed Modifications to the Harmonized Tariff Schedule of the*

United States, Inv. No. 1205–3, Publication No. 2673. In the report, the Commission proposed reclassifying certain phenols—metacresol, orthocresol, paracresol, and metaparacresol, all having a purity of 75 percent or more (75 percent cresols)—from subheading 2707.99 to subheading 2707.60. The change was proposed to achieve international uniformity in customs classification for these products under the Harmonized System. The existing rate of duty was carried over to the new classification.

Following implementation of the modification in December 1995, it was recognized that there was a collateral movement of under 75 percent cresols between subheadings of the HTS that resulted in a significant increase in the rate of duty applicable to this product. Under Section 1205, modifications to the HTS must have substantial duty-rate neutrality and not alter existing competitive conditions. As a consequence, the Commission has received a request from the USTR requesting ''advice in respect of making a technical rectification to the [HTS] to address treatment of [under 75 percent cresols].'' The USTR has requested the Commission's advice by July 28, 1997.

In order to restore the rate of duty previously applied to under 75 percent cresols, the Commission proposes to amend the advice in Inv. No. 1205–3 to include creation of a new subheading for this product, HTS 2707.60.15, carrying the pre-implementation rate of duty (Free in column 1 and column 2), as follows:

The HTS is modified by striking subheadings 2707.60.10 and 2707.60.20 and inserting the following in lieu thereof:

[2707	Oils and other products of the distillation . . .:			
[2707.60	Phenols:			
	Metacresol, orthocresol, paracresol and metaparacresol:			
2707.60.10	Having a purity of 75 percent or more by weight	1¢/kg + 3.3%	Free (A, CA, E, IL, J, MX)	15.4¢/kg +42.5%
2707.60.15	Other	Free		Free
2707.60.30	Other	2.9¢/kg + 12.5%	Free (A, CA, E, IL, J, MX)	7.7¢/kg +29.5%

Request for Comment

Accordingly, the Commission is seeking comments concerning this proposed technical rectification to the HTS.

Deadline

Comments must be received no later than the close of business July 11, 1997, in order to be considered by the Commission.

Written Submissions

All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E St. SW., Washington, DC. 20436. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons.

TDD Access: Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

World Wide Web Access: This notice, and any subsequent notices published pursuant to section 1210 of the 1988 Act, may be obtained from the ITC Internet web server: http://www.usitc.gov.

Issued: June 30, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–17580 Filed 7–2–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States and State of Vermont* v. *Town of Bennington, et al.*, Civil Action Nos. 2:97CV197 and 2:97CV208 was lodged on June 30, 1997, with the United States District Court for the District of Vermont. The complaint in this action seeks (1) to recover, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. §§ 9601 et seq., response costs incurred and to be incurred by the U.S. Environmental Protection Agency (''EPA'') at the Bennington Landfill Superfund Site located in the Town of Bennington, Vermont (''Site''); and (2) injunctive relief under Section 106 of CERCLA, 42 U.S.C. § 9606. The defendants are Add, Inc., Bennington College, Bijur Lubricating Co., Central Vermont Public Service Corporation, Chemfab Corporation, CLR Corporation, Courtaulds Structural Composites, Inc., Eveready Battery Company, Inc., G–C–D–C, Inc. (f/k/a Bennington Iron Works, Inc.), H.M. Tuttle Co., Inc., Johnson Controls, Inc., MASCO/Schmelzer Corporation, Southwestern Vermont Medical Center, Textron, Inc., Town of Bennington, Vermont, Triangle Wire and Cable, Inc., U.S. Tsubaki, Inc., Vermont Agency of Transportation and Vermont Bag and Film, Inc.

The proposed Consent Decree embodies an agreement with 5 potentially responsible parties (''PRPs'') at the Site pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607: (1) to perform a non-time critical removal action (''NTCRA'') at the Site comprising the design, construction and monitoring of a multi-barrier cap; and (2) to implement a natural resource damages (''NRD'') restoration project. The proposed Consent Decree also embodies an agreement with 14 PRPs at the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), to pay $1,776,600, in aggregate, in settlement of claims for past and future response costs at the Site and claims for natural resource damages. The monies paid by these 14 settlers will be used to partially fund the NTCRA and the NRD restoration project being performed by the 5 performing parties.

The Consent Decree provides the settling defendants with a release for civil liability for EPA's and the State of Vermont's (''State's'') past and future CERCLA response costs and natural resource damages at the Site for resources under the trusteeship of the Secretary of the Interior and the Secretary of Commerce, through the National Oceanic and Atmospheric Administration, and under the trusteeship of the State.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree.

Comments should be addressed to the Assistant Attorney General for the Environmental and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States and State of Vermont* v. *Town of Bennington, et al.*, DOJ Ref. No. 90–11–3–868A.

The proposed consent decree may be examined at the Office of the United States attorney, 11 Elmwood Avenue, Burlington Vermont, 05401; the Region I Office of the Environmental Protection Agency, Region I Records Center, 90 Canal Street, First Floor, Boston, MA 02203; and at the Consent Decree Library, 1120 G Street, NW., Fourth Floor, Washington , DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, Fourth Floor, NW., Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $40.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–17604 Filed 7–2–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive, Environmental Response, Compensation and Liability Act (''CERCLA'')

In accordance with Department policy, 28 CFR § 50.7, and Section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed Consent Decree in *U.S.* v. *Larry Jones et al.*, 1:97–CV–73–1 (M.D. Ga.), was lodged on May 15, 1997 with the United States District Court for the Middle District of Georgia. This Consent Decree resolves the action brought by the United States against the settling defendants pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607. The settling defendants are the past and present owners and operators of the T.H. Agriculture Site (''THAN Site'' or ''Site''), operable unit 2, located in Albany, Georgia.

The Consent Decree requires the settling defendants to perform a remedial design/remedial action (''RD/RA'') for operable unit 2 at the Site. Further, the Consent Decree requires the settling defendants to reimburse the United States for all future response costs incurred by the United States at operable unit 2.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environmental and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *U.S.* v. *Larry Jones et al.*, DOJ #90–11–3–1061A.

The proposed Consent Decree may be examined at the office of the United States Attorney, 345 Broad Avenue, Albany, Georgia; the Region 4 office of the Environmental Protection Agency, 61 Forsyth Street, S.W., Atlanta, GA 30303; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check for the reproduction costs. If you want a copy of the Consent Decree (plus attachments), then the amount of the check should be $43.75 (175 pages at 25 cents per page). The check should be made payable to the Consent Decree Library.

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–17437 Filed 7–2–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Consent Decrees in Action Under the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with the Departmental Policy, 28 C.F.R. § 50.7, notice is hereby given that two Consent Decrees in *United States* v. *Ralph Riehl, et al.*, Civil Action No. 89–226(E), were lodged with the United States District Court for the Western District of Pennsylvania on May 8, 1997.

On October 16, 1989, the United States filed a complaint against the owners and operator of, and certain transporters to, the Millcreek Dump Superfund Site (the ''Site''), pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9607(a). In September 1991, the United States added additional defendants to the action. The proposed Consent Decree resolves the liability for defendants Penn Iron & Metal Company (''Penn Iron''), Liberty Iron & Metal Company (''Liberty'') (now operating as one company called ''LIMCO''), and Union Iron & Metal Company for response costs incurred and to be incurred by the United States at the Site. The Consent decree requires the Penn and Liberty to pay $450,000 and Union to pay $17,000 in reimbursement of response costs.

The Department of Justice will accept written comments relating to these proposed Consent Decrees for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to *United STates* v. *Ralph Riehl, et al.*, DOJ No. 90–11–3–519.

Copies of the proposed Consent Decrees may be examined at the Office of the Untied States Attorney, Western District of Pennsylvania, Federal Building and Courthouse, Room 137, 6th and States Streets, Erie, Pennsylvania, 15219; Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107; and at the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, D.C. 20005 (202) 624–0892. Copies of the proposed Decrees may be obtained in person or by mail from the Consent decree Library, 1120 G Street, NW, 4th Floor, Washington, D.C. 20005. When requesting a copy of the proposed Consent Decree, please enclose a check in the amount of $5.75 for the Union Decree and $6.00 for the Penn Iron and Liberty Decree to cover the twenty-five cents per page reproduction costs. Please make the check payable to the ''Consent Decree Library.''

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 97–17436 Filed 7–2–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Shell Oil Company and Shell Wood River Refining Company*, Civil Action No. 97–539–WDS, was

lodged with the United States District Court for the Southern district of Illinois on June 20, 1997 contemporaneously with the filing of a complaint. This proposed consent decree would resolve the United States' civil claims against Shell Oil Company and Shell Wood River Refining Company under the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.* Under the terms of the proposed consent decree, the defendants will pay a civil penalty of $678,000 and perform injunctive relief, including the installation of an enhanced biodegradation unit for controlling benzene emissions from the water extracted from certain groundwater production wells at Defendants facility.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Shell Oil Company and Shell Wood River Refining Company,* Civil Action No. 97–539–WDS, and the Department of Justice Reference No. 90–5–2–1–2037.

The proposed consent decree may be examined at the Office of the United States Attorney, Southern district of Illinois, 9 Executive Drive, Fairview Heights, Illinois 62208; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor; Washington, D.C. 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–17435 Filed 7–2–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Department policy, 28 CFR § 50.7, notice is hereby given that on June 3, 1997, a proposed Consent Decree in *United States* v. *WACO International, Inc.* Civil Action No. 1:94CV0713, was lodged in the United States District Court for the Northern District of Ohio. The Complaint, filed by the United States under the Clean Air Act, as amended, alleged that WACO violated the volatile organic compound (VOC) portion of the Ohio state implementation plan (SIP). The Consent Decree requires WACO to pay a civil penalty of $75,000. The Consent Decree also requires WACO to install a zero-VOC powder coating operation by October 31, 1996. This supplemental environmental project (SEP) is valued at $500,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States* v. *WACO International, Inc.,* D.J. Ref. No. 90–5–2–1–1872.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Northern District of Ohio, 1800 Bank One Center, 600 Superior Avenue, East, Cleveland, Ohio 44114–2600 (contact Assistant United States Attorney Arthur I. Harris); (2) the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Assistant Regional Counsel Susan Perdomo); and (3) at the Consent Decree Library, 1120 G Street N.W. 4th Floor, Washington, D.C. 20005 (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $3.25 (25 cents per page reproduction charge) payable to Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–17433 Filed 7–2–97; 8:45 am]

BILLING CODE 4410–15–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–090]

National Environmental Policy Act; Cassini Mission

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of final supplemental environmental impact statement (FSEIS) for the Cassini Mission to Saturn and its moons.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et.seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA policy and procedures (14 CFR part 1216, subpart 1216.3), NASA has prepared and issued an FSEIS for the Cassini Mission. The FSEIS focuses on the most recently available information pertinent to the risk analyses of potential accidents during the launch and cruise phases of the mission. Certain accidents could potentially result in some release of plutonium dioxide from one or more of the three Radioisotope Thermoelectric Generators (RTG's) and the 129 Radioisotope Heater Units (RHU's) onboard the Cassini spacecraft. The currently planned mission involves the launch of the Cassini spacecraft from Cape Canaveral Air Station (CCAS), Florida, during the primary launch opportunity that begins in early October 1997.

DATES: NASA will take no final action on the proposed launch of the Cassini Mission before August 4, 1997, or 30 days form the date of publication in the **Federal Register** of the U.S. Environmental Protection Agency's notice of availability of the Cassini Mission FSEIS, whichever is later.

ADDRESSES: The FSEIS may be reviewed at the following locations:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street SW, Washington, DC 20546.

(b) Spaceport U.S.A. Room 2001, John F. Kennedy Space Center, FL 32899. Please call Lisa Fowler beforehand at 407–867–2497 so that arrangements can be made.

(c) Jet Propulsion Laboratory, Visitors Lobby, Building 249, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5179).

In addition, the FSEIS may be examined at the following NASA locations by contacting the pertinent Freedom of Information Act Office:

(d) NASA, Ames Research Center, Moffett Field, CA 94035 (415–604–4190).

(e) NASA, Dryden Flight Research Center, Edwards, CA 93523 (805–258–3448).

(f) NASA, Goddard Space Flight Center, Greenbelt, MD 20771 (301–286–0730).

(g) NASA, Johnson Space Center, Houston, TX 77058 (713–483–8612).

(h) NASA, Langley Research Center, Hampton, VA 23655 (757–864–2497).
(i) NASA, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135 (216–433–2222).
(j) NASA, Marshall Space Flight Center, AL 35812 (202–544–0031).
(k) NASA, Stennis Space Center, MS 39529 (601–688–2164).

Limited copies of the FSEIS are available, on a first request basis, by contacting Mark R. Dahl at the address or telephone number indicated below.

FOR FURTHER INFORMATION CONTACT: Mr. Mark R. Dahl, NASA Headquarters, Code SD, Washington, DC 20546–0001; telephone 202–358–1544.

SUPPLEMENTARY INFORMATION: The planned Cassini Mission is an international cooperative effort of NASA, the European Space Agency, and the Italian Space Agency, to explore the planet Saturn and its environment. Saturn is the second-largest and second-most massive planet in the solar system and has the largest, most visible dynamic ring structure of all the planets. The planned mission is an important part of NASA's program for exploration of the solar system, the goal of which is to understand the system's birth and evolution. The Cassini Mission would involve a 4-year scientific exploration of Saturn, its atmosphere, moons, rings, and magnetosphere. The Cassini spacecraft consists of the Cassini Orbiter and the detachable Huygens Probe. The Huygens Probe would be released for a parachute descent into the atmosphere of Titan, Saturn's largest moon. The scientific information gathered by the Cassini Mission could help provide clues to the evolution of the solar system and the origin of life on Earth.

NASA issued the *Final Environmental Impact Statement for the Cassini Mission* in July 1995 (hereinafter the ''EIS'') followed by the associated Record of Decision (ROD) to complete preparation of the Cassini Mission for launch in the October 1997 opportunity, or either the secondary or backup opportunities, and to implement the mission.

The Cassini spacecraft would carry three RTG's that use the heat of decay of plutonium dioxide to generate electric power for the spacecraft and its instruments. The spacecraft would also use 129 RHU's, each containing a small amount of plutonium dioxide, to generate heat for controlling the thermal environment of the spacecraft and several of its instruments.

The action selected and documented in the ROD associated with the EIS consists of completing preparations for and implementing the Cassini Mission to Saturn and its moons, with a launch of the Cassini spacecraft onboard a Titan IV(SRMU)/Centaur. The launch would take place at CCAS during the primary launch opportunity that begins in early October 1997 and continues into mid-November 1997. A secondary launch opportunity extends from the end of November 1997 to early January 1997, with a backup opportunity from mid-March to early April 1999, both using the Titan IV(SRMU)/Centaur. The primary launch opportunity would employ a Venus-Venus-Earth-Jupiter-Gravity-Assist trajectory to Saturn; the secondary and backup opportunities would both employ a Venus-Earth-Earth-Gravity-Assist (VEEGA) trajectory. The above primary launch opportunity remains NASA's preferred alternative and Proposed Action and would allow the Cassini spacecraft to gather the full science return desired to accomplish mission objectives.

Along with the No-Action alternative (ceasing preparations and not implementing the Cassini Mission), the EIS evaluated in detail two other mission alternatives. The March 1999 alternative would have used two Shuttle flights with on-orbit integration of the spacecraft and upper stage, followed by injection of the spacecraft into a VEEGA trajectory to Saturn. Due to the long lead-time in developing and certifying the new upper stage that would be needed to implement it, this alternative is no longer considered reasonable. The other mission alternative considered in the EIS was the 2001 alternative which would use a Titan IV(SRMU)/Centaur to launch the spacecraft from CCAS in March 2001 on a Venus-Venus-Venus-Gravity-Assist trajectory. A backup opportunity in May 2002 would use a VEEGA trajectory. The 2001 alternative would require completing development and testing of a new high-performance rehenium engine for, as well as adding about 20 percent more propellant to, the spacecraft. Science returns from this alternative would meet the minimum acceptable level for the mission.

The results from the safety risk analyses have recently become available. The FSEIS compares this recent best available information with that presented in the EIS. The FSEIS addresses the Proposed Action, the No-Action alternative, and the 2001 mission alternative (which is still available to NASA).

Comments on the draft supplemental environmental impact statement were solicited from Federal, State and local agencies, organizations, and members of the general public through: (a) notices published in the **Federal Register**—NASA notice on April 9, 1997, (62 FR 17216) and U.S. Environmental Protection Agency notice on April 11, 1997, (62 FR 17810); and (b) direct mailings to interested parties. Comments received have been addressed in the FSEIS.

Benita A. Cooper,

Associate Administrator for Management Systems and Facilities.

[FR Doc. 97–17404 Filed 7–2–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–091]

National Environmental Policy Act; X–33 Advanced Technology Demonstrator Vehicle Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of the draft environmental impact statement (DEIS) for the X–33 Advanced Technology Demonstrator Vehicle program.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA policy and procedures (14 CFR part 1216 subpart 1216.3), NASA has prepared and issued a DEIS for Phase II of the X–33 Program, which involves the development and demonstration of the X–33 test vehicle. The DEIS addresses environmental issues associated with the preparation of the flight operations (launch) and landing sites and testing of the X–33 technology demonstrator spaceplane. The purpose of the proposed test program is to demonstrate the feasibility of technology which could result in commercially viable Reusable Launch (RLVs).

The reasonable alternative launch sites are located within Edwards Air Force Base (AFB) near Lancaster, California.

Reasonable alternative landing sites for segments of the flight test activities are located at Silurian Lake, near Baker, California; China Lake Naval Air Warfare Center, near Ridgecrest, California; Dugway Proving Grounds, near Tooele, Utah; Grant County Airport, Moses Lake, Washington; and Malmstrom AFB, Great Falls, Montana. NASA is the lead agency in the preparation of the environmental impact statement. Components of the U.S. Department of Defense; the U.S.

Department of the Interior, Bureau of Land Management; and the U.S. Department of Transportation, Federal Aviation Administration are acting as cooperating agencies.

DATES: Comments on the DEIS must be submitted in writing and received by NASA no later than August 18, 1997 or 45 days from the date of publication in the **Federal Register** of the U.S. Environmental Protection Agency's notice of availability of the X–33 DEIS, whichever is later.

ADDRESSES: Written comments should be addressed to Dr. Rebecca C. McCaleb, NASA, Marshall Space Flight Center, AE01/Building 4201, Marshall Space Flight Center, AL 35812. In addition, written comments may be sent to Dr. McCaleb electronically at (X33EIS@msfc.nasa.gov) or by facsimile at 205–544–9259. The DEIS may be reviewed at the following locations:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street SW, Washington, DC 20546.
(b) NASA, Marshall Space Flight Center, Library, Building 4200, Huntsville, AL 35812.
(c) NASA, Dryden Flight Research Center, Library, Building 4800, Room 2149, Edwards AFB, CA 93523.
(d) NASA,Spaceport USA, Room 2001, John F. Kennedy Space Center, FL 32899. Please call Lisa Fowler beforehand at 407–867–2468 so that arrangements can be made.
(e) Kern County Library, Boron Branch, 27070 Highway 5, Boron, CA 93516.
(f) Kern County Library, Ridgecrest Branch, 131 East Las Flores Street, Ridgecrest, CA 93555.
(g) Los Angeles County Library, Lancaster Branch, 1150 West Avenue J, Lancaster, CA 93524.
(h) Palmdale City Library, 700 East Palmdale Boulevard, Palmdale, CA 93550.
(i) San Bernadino County Library, Barstow Branch, 304 East Buena Vista, Barstow, CA 92311.
(j) Great Falls Public Library, 301 2nd Avenue North, Great Falls, MT 59401.
(k) Moses Lake Library, 418 East 5th Street, Moses Lake, WA 98837.
(l) Dugway Proving Grounds Library, 5124 Kisstler Avenue, Dugway, UT 84022.
(m) Tooele Library, 47 East Vine Street, Tooele, UT 84074.
(n) Salt Lake City Library, 209 East 500 South, Business/Science Department, Salt Lake City, UT 84111.

In addition, the DEIS may be examined at the following NASA locations by contacting the pertinent Freedom of Information Act Office:

(o) NASA, Ames Research Center, Moffett Field, CA 94035 (415–604–4190).
(p) NASA, Goddard Space Flight Center, Greenbelt, MD 20771 (301–286–0730).
(q) Jet Propulsion Laboratory, NASA Resident Office, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5179).
(r) NASA, Johnson Space Center, Houston, TX 77058 (713–483–8612).
(s) NASA, Langley Research Center, Hampton, VA 23665 (757–864–2497).
(t) NASA, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135 (216–433–2222).
(u) NASA, Stennis Space Center, MS 39529 (601–688–2164).

The DEIS can be found and accessed at the following internet address: http://eemo.msfc.nasa.gov/eemo/x33__eis. Limited copies of the DEIS are available, on a first request basis, by contacting Dr. Rebecca McCaleb at the address indicated above or Dr. Dominic Amatore by telephone at the number provided below.

FOR FURTHER INFORMATION CONTACT: Dr. Dominic A. Amatore, Deputy Director, Public Affairs Office, Code CA01, Marshall Space Flight Center, AL 35812, 205–544–6533.

SUPPLEMENTARY INFORMATION: The X–33 test vehicle is planned as an approximately one-half scale reusable spaceplane. The vehicle would launch vertically and land horizontally. The X–33 vehicle would consist of a lifting body airframe with two cryogenic liquid propellant tanks (liquid hydrogen (LH2) and liquid oxygen (LOX)) placed within the aeroshell, and would use two linear aerospike main engines. Water would be the primary product of the LOX/LH2 combustion. The entire spaceplane (with all fuel tanks and engines) would launch and land as a single unit.

The flight test plan to meet the X–33 program objectives optimally involves flights of approximately 160, 720, and 1,530 kilometers (100, 450, and 950 miles). During the landing sequence, the spaceplane would be unpowered. Flight tests would involve speeds of up to Mach 15 and altitudes up to approximately 75,800 meters (250,000 feet). None of the X–33 test flights would achieve Earth orbit. Ground operations and servicing (e.g., checkout, refueling, etc.) would be conducted with ''aircraft like'' procedures and systems. The test flight program would be conducted in three stages, with all launches occurring from the same launch site. The three stages would involve the incremental increase of distance and speed, referred to as the ''flight envelope expansion,'' which allows the development program to minimize risk while achieving test objectives. The three stage approach would necessitate short-range, mid-range, and long-range landing sites to achieve speeds of March 4, 12, and 15, respectively. After each test flight, the X–33 would be ferried back to the flight operations site by a Boeing 747 aircraft in a manner similar to that used for the transport of Space Shuttle orbiters. The test program is currently planned for a combined total of 15 flights.

Reasonable alternatives considered for this proposed action include:

—Flight operations (launch) sites:
(a) Edwards Air Force Base, California, Space Port 2000 site, and
(b) Edwards Air Force Base, California, Haystack Butte site;
—Short-range landing sites:
(a) Armitage Airfield, China Lake Naval Air Warfare Center, California, and
(b) Silurian Lake, a dry lake bed, north of Baker, California;
—Mid-range landing sites:
Michael Army Air Field, Dugway Proving Ground, Utah;
—Long-range landing sites (may serve as an alternative mid-range landing site):
(a) Malmstrom Air Force Base, Great Falls Montana, and
(b) Grant County Airport, Moses Lake, Washington; and,—''No Action.'' The ''No Action'' alternative (*i.e.*, absence of the X–33 Program) would mean that the RLV Program, as planned, could not proceed.

The DEIS considers the potential environmental impacts associated with the test program and related construction/modification of facilities. Areas of focus include, but are not necessarily limited to: noise and sonic booms; flight safety; surface transportation impacts; effects on airspace and air traffic; wildlife and threatened and endangered species; and cultural resources.

Public information meetings will be held at the following dates, times, and locations:

(a) Monday, July 7, 1997; 7:00 p.m.; Washington, State National Guard Armory, 6500 32nd Avenue, N.E., Moses Lake, Washington 98837.
(b) Tuesday, July 8, 1997; 6:00 p.m.; Great Falls High School, 1900 Second Avenue, South, Great Falls, Montana 59405.
(c) Wednesday, July 9, 1997; 7:00 p.m.; Social Rehabilitative Services Auditorium, 111 Sanders Avenue, Helena, Montana 59601.
(d) Thursday, July 10, 1997; 7:00 p.m.; University of Idaho/Idaho State University, 1776 Science Center Drive, Idaho Falls, Idaho 83402.

(e) Monday, July 14, 1997; 7:00 p.m.; US Army Dugway Proving Grounds, Old Post Headquarters, Building 5450, Command Conference Room, Dugway, Utah 84022.
(f) Tuesday, July 15, 1997; 6:00 p.m.; Salt Lake City Public Library, Main Library Lecture Hall, 209 East 500 South, Salt Lake City, Utah 84111.
(g) Wednesday, July 16, 1997; 7:00 p.m.; Tooele Senior Center, 59 East Vine Street, Tooele, Utah 84074.
(h) Monday, July 21, 1997; 7:00 p.m.; Lancaster High School, 44701 32nd Street West, Lancaster, California 93536.
(i) Tuesday, July 22, 1997; 7:00 p.m.; Boron High School, 26831 Prospect Street, Boron, California 93516.
(j) Wednesday, July 23, 1997; 7:00 p.m.; Burroughs High School, 500 East French Street, Ridgecrest, California 93555.
(k) Thursday, July 24, 1997; 7:00 p.m.; Baker Senior Citizen Center, 73730 Baker Blvd., Baker, California 92309.

Benita A. Cooper,

Associate Administrator for Management Systems and Facilities.

[FR Doc. 97–17405 Filed 7–2–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Theater Section (Heritage & Preservation and Education & Access categories) to the National Council on the Arts will be held on July 28–31, 1997. The panel will meet from 9:30 a.m. to 5:30 p.m. on July 28–30 and from 9:30 a.m. to 5:00 p.m. on July 31, in Room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506. A portion of this meeting, from 2:30 to 5:30 on July 30, will be open to the public for a discussion of policy, guidelines, Leadership Initiatives, and field trends and needs.

The remaining portions of this meeting, from 9:30 a.m. to 5:30 p.m. on July 28–29, from 9:30 a.m. to 2:30 p.m. on July 30, and from 9:30 a.m. to 5:00 p.m. on July 31, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: June 27, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–17418 Filed 7–2–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences; Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Biological Sciences; Committee of Visitors (1110).

Date and Time: July 21–23, 1997; 8:30 a.m. to 5:00 p.m.

Place: Room 330 & 340, National Science Foundation, 4201 Wilson boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. John C. S. Fray [Division of Integrative Biology and Neuroscience], National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. Telephone: (703) 306–1420.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Division of Integrative Biology and Neuroscience.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters are exempt under U.S.C. (c) (4) and (6) of the Government in The Sunshine Act would be improperly disclosed.

Dated: June 30, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–17488 Filed 7–2–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Cross Disciplinary Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Cross Disciplinary Activities (1193).

Date and Time: July 24, 1997; 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Room 330.

Contact Person: Robert Voigt, HPCC Coordinator, CISE/OCDA, Room 1105, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1980.

Type of Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Challenges in CISE proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 30, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–17487 Filed 7–2–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meetings:

Names and Committee Code: Special Emphasis Panel in Polar Program #1209.

Dates and Times: July 28, 1997; 6:00 p.m.–10:00 pm, July 29, 1997; 8:00 am–6:00 pm, July 30, 1997; 8:00 am–5:00 pm.

Place: University of Chicago, Ida Noyes Hall, 1212 E. 59th Street, Chicago Ill.

Type of Meeting: Closed.

Contact Person: Dr. Linda E. Duguay, Technical Coordinator, Office of Polar Programs, NSF, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning support for the Center for Astrophysical Research in the Antarctic, Science and Technology Center, University of Chicago.

Agenda: To review and evaluate a proposal and provide advice and recommendations as part of the review process for proposal submitted to the National Science Foundation.

Reason for Closing: The activity being evaluated may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 30, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–17486 Filed 7–2–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

GPU Nuclear Corporation, Three Mile Island Nuclear Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations for Facility Operating License No. DRP–50 issued to GPU Nuclear Corporation (the licensee), for operation of Three Mile Island Nuclear Station, Unit 1 (TMI–1) located in Dauphin County, Pennsylvania.

Environmental Assessment

Identification of Proposed

The proposed action would exempt the GPU Nuclear Corporation from the requirements of 10 CFR 70.24(a), which requires a monitoring system that will energize clear audible alarms if accidental criticality occurs in each area in which special nuclear material is handled, used, or stored. The proposed action would also exempt the licensee from the requirements to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored to ensure that all personnel withdraw to an area of safety upon the sounding of the alarm, to familiarize personnel with the evacuation plan, and to designate responsible individuals for determining the cause of the alarm, and to place radiation survey instruments in accessible locations for use in such an emergency.

The proposed action is in accordance with the licensee's application for exemption dated February 7, 1997, as supplemented March 26 and June 5, 1997.

The Need for the Proposed Action

The purpose of 10 CFR 70.24(a) is to ensure that if a criticality were to occur during the handling of special nuclear material, personnel would be alerted to that fact and would take appropriate action. At a commercial nuclear power plant, the inadvertent criticality with which 10 CFR 70.24 is concerned could occur during fuel handling operations. The special nuclear material that could be assembled into a critical mass at a commercial nuclear power plant is in the form of nuclear fuel; the quantity of other forms of special nuclear material that is stored on site is small enough to preclude achieving a critical mass. Because the fuel is not enriched beyond 5.0 weight percent Uranium-235 and because commercial nuclear plant licensees have procedures and design features that prevent inadvertent criticality, the staff has determined that inadvertent criticality is not likely to occur due to the handling of special nuclear material at a commercial power reactor. The requirements of 10 CFR 70.24(a), therefore, are not necessary to ensure the safety of personnel during the handling of special nuclear materials at commercial power reactors.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that there is no significant environmental impact if the exemption is granted. Inadvertent or accidental criticality will be precluded through compliance with the TMI–1 Technical Specifications (TS), the design of the fuel storage racks providing geometric spacing of fuel assemblies in their storage locations, and administrative controls imposed on fuel handling procedures. TS requirements specify reactivity limits for the fuel storage racks and minimum spacing between the fuel assemblies in the storage racks.

Appendix A of 10 CFR Part 50, ''General Design Criteria for Nuclear Power Plants,'' Criterion 62, requires that criticality in the fuel storage and handling system shall be prevented by physical systems or processes, preferably by use of geometrically safe configurations. This is met at TMI–1, as identified in Section 5.4.1 of the TS. TMI–1 TS Section 5.4–1 states that new fuel will normally be stored in the fuel storage vault or spent fuel pools.

For the new fuel storage vault, the fuel assemblies are stored in racks in parallel rows having a nominal center to center distance of 21⅛ inches in both directions. The spacing in the new fuel storage vault is sufficient to maintain K_{eff} less than 0.95 based on storage of fuel assemblies in clean unborated water or less than 0.98 based on storage in an optimum hypothetical low density moderator (fog or foam) for fuel assemblies with a nominal enrichment of 5.0 weight percent U^{235}. When fuel is being stored in the new fuel storage vault, twelve (12) storage locations (aligned in two rows of six locations each; transverse row numbers four and eight) must be left vacant of fissile or moderating material to provide sufficient neutron leakage to satisfy the NRC maximum allowable reactivity value under the optimum low moderator density condition.

For Spent Fuel Pool ''A,'' the fuel assemblies are stored in racks in parallel rows, having a nominal center to center distance of 11.1 inches in both directions for the Region I racks and 9.2 inches in both directions for the Region II racks. The spacing in the Spent Fuel Pool ''A'' storage locations for both Regions I and II is adequate to maintain K_{eff} less than 0.95. Region I will store fuel with a maximum 5.0 percent initial enrichment. Region II will store new fuel with low enrichment. When fuel is being moved in or over the Spent Fuel Storage Pool ''A'' and fuel is being stored in the pool, a boron concentration of at least 600 ppmb must be maintained to meet the NRC maximum allowable reactivity value under the postulated accident condition.

For Spent Fuel Pool ''B,'' the fuel assemblies are stored in racks in parallel rows, having nominal center to center distance of 13⅝ inches in both directions. This spacing is sufficient to maintain a K_{eff} less than 0.95 based on fuel assemblies with a maximum enrichment of 4.37 weight percent U^{235}. When fuel is being moved in or over the Spent Fuel Storage Pool ''B'' and fuel is being stored in the pool, a boron concentration of at least 600 ppmb must be maintained to meet the NRC maximum allowable reactivity value

under the postulated accident condition.

The proposed exemption would not result in any significant radiological impacts. The proposed exemption would not affect radiological plant effluent nor cause any significant occupational exposures since the TS, design controls, including geometric spacing of fuel assembly storage spaces, and administrative controls preclude inadvertent criticality. The amount of radioactive waste would not be changed by the proposed exemption.

The proposed exemption does not result in any significant nonradiological environmental impacts. The proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed exemption, the staff considered denial of the requested exemption. Denial of the request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement Related to the Operation of TMI–1 dated December 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on June 27, 1997, the staff consulted with the Pennsylvania State official, Mr. Maingi, Department of Environmental Protection, Bureau of Radiation Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 7, 1997, as supplemented March 26 and June 5, 1997, which are available for public inspection at the Commission's Public Document Room, which is located at The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Law/Government Publications Sections, State Library of Pennsylvania, Walnut Street and Commonwealth Avenues, Harrisburg, Pennsylvania.

Dated at Rockville, Maryland, this 27th day of June 1997.

For the Nuclear Regulatory Commission.

Bart C. Buckley,

Senior Project Manager, Project Directorate I–3, Division of Reactor Projects I/II Office of Nuclear Reactor Regulation.

[FR Doc. 97–17463 Filed 7–2–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–282, 50–306, and 72–10]

Northern States Power Company (Prairie Island Nuclear Plant, Units 1 and 2), Prairie Island Independent Spent Fuel Storage Installation; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by a Petition filed pursuant to 10 CFR 2.206 on May 28, 1997, Prairie Island Indian Community (Petitioner) requested that the NRC (1) determine that Northern States Power (the licensee) violated the requirements of 10 CFR 72.122(l) by using its Materials License No. SNM–2506 for an Independent Spent Fuel Storage Installation (ISFSI) prior to establishing conditions for safely unloading the TN–40 dry storage containers; (2) suspend Materials License No. SNM–2506 for cause under 10 CFR 50.100 until such time as all significant issues in the unloading process, as described in the Petition, have been resolved, the unloading process has been demonstrated, and an independent third-party review of the TN–40 unloading procedure has been conducted; (3) provide Petitioners an opportunity to participate in the reviewing of the unloading procedure for the TN–40 cask, hold hearings, and allow Petitioners to participate fully in these and any other procedures initiated in response to the Petition; and (4) update the Technical Specifications for the Prairie Island ISFSI to incorporate mandatory unloading procedure requirements.

The Petition has been referred to the Director of the Office of Nuclear Reactor Regulation. By letter dated June 27, 1997, the Director denied Petitioner's request for immediate action. As provided by 10 CFR 2.206, further action will be taken within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC, and at the local public document room located at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota.

Dated at Rockville, Maryland, this 27th day of June 1997.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–17462 Filed 7–2–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362]

Southern California Edison Company, et al. (San Onofre Nuclear Generating Station); Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by e-mail request dated April 25, 1997, Stephen Dwyer (Petitioner) requested that the U.S. Nuclear Regulatory Commission (Commission or NRC) supplement his 2.206 petition dated September 22, 1996, which is currently being considered by the NRC. In his September 22 2.206 petition, Mr. Dwyer requested that the NRC shut down the SONGS units as soon as possible pending a complete review of the seismic design of the SONGS units based on the new information gathered from the Landers and Northridge quakes. By NRC letter dated November 22, 1996, the NRC denied the Petitioner's September 22 request that the Commission immediately shut down SONGS.

In his April 25 e-mail to NRC Chairman Jackson, Mr. Dwyer specified his concerns related to the ability of the San Onofre Nuclear Generating Station (SONGS) steam generators to withstand a major seismic event. Specifically, Mr. Dwyer stated that the ability of the SONGS steam generators to withstand a major seismic event is seriously compromised by the degradation recently observed in the SONGS Unit 3 steam generator internal tube supports

(eggcrate supports). You requested an investigation to determine if Unit 2 has experienced degradation similar to that found in Unit 3. You also stated that further seismic analysis should be performed for the SONGS steam generators and that a retrofitting upgrade of the steam generator supports could be accomplished at this time. For the reasons stated in NRC's letter of June 26, 1997, the staff will treat this request as a separate petition and not supplement Mr. Dwyer's September 22 2.206 petition with his concerns regarding the eggcrate supports.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. By letter dated June 26, 1997, the Petitioner's request that the Commission immediately shut down SONGS was denied. As provided by Section 2.206, appropriate action will be taken on this request within a reasonable time.

A copy of the Petition is available for inspection in the Commission's Public Document Room at 2120 L Street, NW, Washington, DC 20555–0001, and the Local Public Document Room at the Main Library, University of California, P. O. Box 19557, Irvine, CA 92713.

Dated at Rockville, Maryland, this 26th day of June 1997.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–17464 Filed 7–2–97; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection Title:* Investigation of Claim for Possible Days of Employment or State Benefits Received.

(2) *Form(s) submitted:* ID–5i, ID–5R(Sup), ID–49R, and UI–48.

(3) *OMB Number:* 3220–0049.

(4) *Expiration date of current OMB clearance:* 08/31/1997.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or households, business or other for-profit, state, local or tribal government.

(7) *Estiamted annual number of respondents:* 5,900.

(8) *Total annual responses:* 5,900.

(9) *Total annual reporting hours:* 1,388.

(10) *Collection description:* Under the Railroad Unemployment Insurance Act, unemployment or sickness benefits are not payable for any day in which remuneration is payable or accrues to the claimant. The collection obtains information from the claimant, railroad, and non-railroad employers and state agencies about work performed and/or benefits received during the same periods as benefits are claimed.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained form Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202)–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 97–17432 Filed 7–2–97; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22728; 811–4319]

Dreyfus Unit Trusts Insured Tax Exempt Trust Series 1; Notice of Application

June 27, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Dreyfus Unit Trusts Insured Tax Exempt Trust Series 1.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on May 14, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:00 p.m. on July 22, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for layers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 200 Park Avenue, New York, NY 10166.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 942–0564, or Mercer E. Bullard, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a New York trust, is a registered unit investment trust under the Act. Applicant filed a Notification of Registration on From N–8A under Section 8(a) of the Act and a Registration Statement on From S–6 under the Securities Act of 1933 on June 6, 1985. Applicant commenced operations on December 10, 1985, upon the effectiveness of its Registration Statement.

2. All of applicant's portfolio securities were called, and the proceeds were distributed to unitholders in complete liquidation of their interests on June 17, 1996. At that date, applicant had aggregate net assets amounting to $334,904 and 3,752 units outstanding, or a net asset value per unit of $89.25. No brokerage commissions were paid in connection with the called securities and applicant did not bear any liquidation expenses, which amounted to approximately $1,518.

3. Applicant has no securityholders or assets, outstanding debts or liabilities, and is not a party to any litigation or administrative proceeding. Applicant will engage in no activities other than those necessary for the winding-up of its affairs. Applicants intends to file all documents required to terminate its existence as a New York trust.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–17422 Filed 7–2–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [62 FR 34722, June 27, 1997].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: June 27, 1997.

CHANGE IN THE MEETING: Deletion.

The following item will not be considered at the closed meeting scheduled for Tuesday, July 1, 1997:

Opinion.

Commissioner Hunt, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: the Office of the Secretary (202) 942–7070.

Dated: June 30, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–17539 Filed 6–30–97; 4:41 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Federal Register Citation of Previous Announcement: [62 FR 34722, June 27, 1997].

Status: Closed Meeting.

Place: 450 Fifth Street, N.W., Washington, D.C.

Date Previously Announced: June 27, 1997.

Change in the Meeting: Cancellation of Meeting.

The closed meeting scheduled for Tuesday, July 1, 1997, at 10:00 a.m., has been cancelled.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: July 1, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–17586 Filed 7–1–97; 11:13 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38780; File No. SR–PCX–97–15]

Self-Regulatory Organizations; Pacific Stock Exchange Incorporated; Order Granting Approval to Proposed Rule Change Relating to Trading Differentials for Equity Securities

June 26, 1997.

On May 5, 1997, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a procedure that allows the Exchange to establish trading differentials on an expedited basis.

The proposed rule change was published for comment in the **Federal Register**, and no comments were received.[3] This order approves the proposal.[4]

PCX Rule 5.3(b) currently provides that, unless specifically ruled otherwise, the trading differentials on stocks shall be as follows: On stocks other than those traded on the New York Stock Exchange (''NYSE'') or American Stock Exchange (''Amex''): if the selling price is below ½ of $1, the trading differential is 1/32; if the selling price is ½ of $1 but under $5, the trading differential is 1/16; and if the selling price is $5 and above, the trading differential is ⅛. This rule further provides that on stocks also traded on the NYSE or the Amex, the trading differentials shall be the same as those prescribed by such exchanges.

The Exchange is proposing to establish a procedure whereby the Exchange may determine the trading differentials for equity securities traded on the Exchange. The Exchange is proposing this change in order to add flexibility, so that it can change its trading differentials on an immediate basis.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6 and Section 11A of the Act.[5]

There has been a movement within the industry to reduce the minimum trading and quotation increments imposed by the various self-regulatory organizations (''SROs''). The NYSE, The Nasdaq Stock Market (''Nasdaq''), and the Amex have recently reduced their minimum increments.[6] In addition, several third market makers have begun quoting securities in increments smaller than the primary markets. The proposed rule change will allow the PCX the flexibility it needs to address this development and remain competitive with these markets.

Nevertheless, the Commission notes that any further change in the minimum increments constitutes (1) a change in a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the PCX, or (2) a change in an existing order-entry or trading system of an SRO, or (3) both. Therefore, the Exchange is still obligated to file such proposed changes with the Commission.[7]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–PCX–97–15) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–17469 Filed 7–2–97; 8:45 am]

BILLING CODE 8010–01–M

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 38580 (May 7, 1997), 62 FR 26605 (May 14, 1997).

[4] The Commission previously granted temporary accelerated approval to the procedures described herein. Securities Exchange Act Release No. 38575 (May 6, 1997), 62 FR 16606 (May 14, 1997) (File No. SR–PCX–97–16).

[5] 15 U.S.C. 78f(b) and 78k–1. In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* § 78c(f).

[6] Securities Exchange Act Release No. 38744 (June 18, 1997), 62 FR 34334 (June 25, 1997) (granting temporary accelerated approval to an NYSE proposal to replace eighths with sixteenths as the minimum trading increment for NYSE-listed securities); Securities Exchange Act Release No. 38571 (May 5, 1997), 62 FR 25682 (May 9, 1997) (approving an Amex proposal to reduce the minimum trading increment from ⅛ to 1/16 for Amex-listed equity securities); Securities Exchange Act Release No. 38678 (May 27, 1997), 62 FR 30363 (June 6, 1997) (approving a proposed rule change by Nasdaq to reduce the minimum quotation increment from ⅛ to 1/16 for Nasdaq-listed securities).

[7] These changes, however, may become effective upon filing if they meet certain statutory requirements. *See* 15 U.S.C. 78s(b)(3)(A)(i) and 17 CFR 240.19b–4(e).

[8] *Id.* § 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 2566]

United States International Telecommunications Advisory Committee (ITAC) Ad Hoc on ITU Policy Forum (GMPCS); Meeting Notice

The Department of State announces a meeting, under the U.S. International Telecommunications Advisory Committee (ITAC), of its Ad Hoc Group on the ITU Policy Forum on GMPCS (held in Geneva, October 1996). The meeting will be held Friday, July 11, 1997, at 9:30 a.m. in Room 847 of the Federal Communications Commission, 1919 M Street, NW, Washington, D.C. This late notice was necessitated by the urgent need to seek advice on U.S. positions for re-scheduled international meetings.

The purpose of the meeting is to review and consider the follow-up activities relating to the 1996 Policy Forum on Global Mobile Personal Communications by Satellite (GMPCS). Primary focus will be given to Opinion No. 4 (Establishment of an MOU to Facilitate the Free Circulation of GMPCS) and Opinion No. 5 (Implementation of GMPCS in Developing Countries). The working group chairpersons will report on past and upcoming national and international activities related to the two Opinions. The meeting of the Ad Hoc Group, which will be as brief as possible, will be followed immediately in the same location by a meeting of the Working Group on Opinion No. 4 (GMPCS–MOU). Questions regarding the agenda or Ad Hoc activities in general may be directed to Gary Fereno, Department of State (202–647–0200).

Members of the general public may attend the meetings and join in the discussions, subject to the instructions of the chair. Participants in the meeting should comply with any entry conditions established by the FCC.

Dated: June 27, 1997.

Richard E. Shrum,

ITAC Executive Director.

[FR Doc. 97–17546 Filed 6–30–97; 4:55 pm]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published in 61 FR 68810–68811, December 30, 1996.

DATES: Comments must be submitted on or before August 4, 1997.

FOR FURTHER INFORMATION CONTACT: Edward Kosek, NHTSA Information Collection Clearance Officer at (202) 366–2589.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration (NHTSA)

Title: Tire Identification and Recordkeeping.

OMB No.: 2127–0050.

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Affected Public: Tire Manufacturers, Dealers, and Distributors

Abstract: NHTSA requires each tire manufacturer to collect and maintain records of the names and addresses of the first purchasers of new tires. To carry out this mandate, 49 CFR Part 574 requires tire dealers and distributors to record the names and addresses of retail purchasers of new tires and the identification number(s) of the tire sold.

Need: The information is used by a tire manufacturer, when it determines that some of its tires either fail to comply with an applicable safety standard or contain a safety-related defect. With the information on the registration form, the tire manufacturer can notify the first purchaser of the tire and provide the purchaser with any necessary information or instructions.

Estimated Annual Burden Hours: 747,500.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on June 26, 1997.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–17470 Filed 7–2–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[RTCA Special Committee 188]

RTCA, Inc.; Minimum Aviation System Performance Standards for High Frequency Data Link

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. Law 92–463, 5 U.S.C., Appendix 2), notice is hereby given for an RTCA Special Committee 188 meeting to be held July 28–31, 1997, starting at 9:30 a.m. on Monday, July 28, and at 9:00 a.m. on the subsequent days. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036, on July 28 and 30–31 and at Jeppesen, Sanderson, Inc., 1705 DeSales Street, NW., Washington, DC 20036, on July 29.

July 28: Working Group 1 MASPS; July 29: Continue Working Group 1; July 30: Working Group 2 MOPS; July 31: Plenary Session (9:00 a.m.–12:00 noon).

The agenda of the Plenary Session will be as follows: (1) Introductory Remarks; (2) Review and Approval of Meeting Agenda; (3) Approval of the Summary of the Previous Meeting; (4) Review of Working Group 1 (MASPS) Work; (5) Review of Working Group 2 (MOPS) Work; (6) Open Discussion; (7) Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone; (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 25, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–17454 Filed 7–2–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge at Grand Rapids-Itasca County Airport, Grand Rapids, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Grand Rapids-Itasca County Airport and use the revenue from a PFC at Grand Rapids-Itasca County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 4, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450–2706.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Terry Helmer, Airport Manager, Grand Rapids-Itasca County Airport, at the following address: Grand Rapids-Itasca County Airport Commission, 1500 Seventh Ave., S.E., Grand Rapids, MN 55744.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Grand Rapids-Itasca County Airport Commission under section 158.23 of Part 159.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon Nelson, Program Manager, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450–2706, telephone (612) 713–4358. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Grand Rapids-Itasca County Airport and use the revenue from a PFC at Grand Rapids-Itasca County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On June 23, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Grand Rapids-Itasca County Airport Commission was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 27, 1997.

The following is a brief overview of the application:

PFC application number: 97–01–C–00–GPZ.

Level of the proposed PFC: $3.00.

Proposed charge effective date: December 1, 1997.

Proposed charge expiration date: May 1, 2031.

Total estimated PFC revenue: $1,297,059.

Brief description of proposed project(s): Install Instrument Landing System (ILS) for Runway 34; Land acquisition and easement purchase in the approach to Runway 34; Install deer fence; Install airfield guidance signs; Airfield pavement rehabilitation and crack restructuring; Construct new passenger terminal; Reconstruct and expand aircraft parking apron; Construct auto parking lot; Construct entrance road to new passenger terminal building; Passenger Facility Charge application; Passenger Facility Charge administration.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Grand Rapids-Itasca County Airport Commission Office.

Issued in Des Plaines, Illinois, on June 26, 1997.

Barbara Jordan,

Acting Manager, Airports Planning/Programming Branch, Great Lakes Region.

[FR Doc. 97–17453 Filed 7–2–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB No. MC–F–20911]

Greyhound Lines, Inc.—Control—Valley Transit Company, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance transaction.

SUMMARY: Greyhound Lines, Inc. (Greyhound or applicant) has filed an application under 49 U.S.C. 14303 to acquire control of Valley Transit Company, Inc. (Valley).[1] Persons wishing to oppose the application must follow the rules under 49 CFR part 1182, subpart B. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments are due by August 18, 1997. Applicant may reply by September 2, 1997. If no comments are received by August 18, 1997, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20911 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington DC 20423–0001. In addition, send one copy of any comments to applicant's representative: Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, N.W., Washington, DC 20005–3934.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. (TDD for the hearing impaired (202) 565–1695.)

SUPPLEMENTARY INFORMATION: Greyhound is a motor passenger carrier operating nationwide, scheduled regular-route service. Valley is also a motor passenger carrier, operating scheduled, regular-route service in the State of Texas.

[1] Greyhound will also be purchasing certain noncarrier properties controlled by the stockholders of Valley, i.e., Valley Bus Company, Inc., Valley Express Co., Inc., Valley GMC Truck Company, Valley Bus Service Company, First Texas Commercial, Inc., Valley Garage, Inc. VDR Services, Inc., First Bus Corporation, and Motor Coach Leasing Co., Inc.

Under the proposed transaction, Valley will remain a separate corporation but become a wholly owned subsidiary of Greyhound. Greyhound currently has an action before the Board to acquire Carolina Coach Company, Inc., Kannapolis Transit Company, and Seashore Trailways. Greyhound also controls Texas, New Mexico & Oklahoma Coaches, Inc., Continental Panhandle Lines, Inc., Vermont Transit Company, Inc., Los Rapidos, Inc., and Grupo Centro, Inc. (Grupo), each of which is a regional motor passenger carrier.

Applicant asserts that the aggregate gross operating revenues of Greyhound and its affiliates exceeded $2 million during the twelve months preceding the filing of this application (the minimum gross operating revenues required to trigger section 14303). Applicant also states that the proposed transaction will have no competitive effects, and that the operations of the carriers involved will remain unchanged; that the total fixed charges associated with the proposed transaction are well within Greyhound's financial means; and that there will be no change in the status of any employees of Valley, and only minimal changes in the status of a few Greyhound employees. According to applicant, the affected Greyhound employees will be accommodated pursuant to the collective bargaining agreements with the unions representing them. Thus, applicant asserts, because no employees will be adversely affected, no conditions need be attached for their protection.

Applicant certifies that the pertinent carrier parties have satisfactory safety fitness ratings (including Greyhound's affiliates, except Grupo, a newly organized motor carrier); that Greyhound and Valley maintain sufficient liability insurance and are neither domiciled in Mexico nor owned or controlled by persons of that country; and that approval of the transaction will not significantly affect either the quality of the human environment or the conservation of energy resources. Additional information may be obtained from applicant's representative.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

On the basis of the application, we find that the proposed acquisition of control is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed as having been vacated and a procedural schedule will be adopted to reconsider the application. If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisition of control is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

3. This decision will be effective on August 18, 1997, unless timely opposing comments are filed.

4. A copy of this notice will be served on the Department of Justice, Antitrust Division, 10th Street and Pennsylvania Avenue, N.W., Washington DC 20530.

Decided: June 24, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–17489 Filed 7–2–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

June 18, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0022.
Form Number: IRS Form 712.
Type of Review: Extension.
Title: Life Insurance Statement.
Description: Form 712 is used to establish the value of life insurance policies for estate and gift tax purposes. The tax is based on the value of these policies. The form is completed by life insurance companies.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 60,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—18 hr., 25 min.
Preparing the form—24 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 1,134,600 hours.

OMB Number: 1545–0025.
Form Number: IRS Form 851.
Type of Review: Extension.
Title: Affiliations Schedule.
Description: Form 851 is filed by the parent corporation for itself and the affiliated corporations in the affiliated group of corporations that files a consolidated return (Form 1120). Form 851 is attached to the 1120. This information is used to identify the members of the affiliated group, the tax paid by each, and to determine that each corporation qualifies as a member of the affiliated group as defined in section 1504.

Respondents: Business or other for-profit, Farms.

Estimated Number of Respondents/Recordkeepers: 4,000.

Estimated Burden Hours Per Respondent/Recordkeepers:

Recordkeeping—8 hr., 51 min.
Learning about the law or the form—42 min.
Preparing and sending the form to the IRS—52 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 41,680 hours.

OMB Number: 1545–0184.
Form Number: IRS Form 4797.
Type of Review: Extension.
Title: Sales of Business Property.
Description: Form 4797 is used by taxpayers to report sales, exchanges, or involuntary conversions of assets, other than capital assets, and involuntary conversions of capital assets held more than one year. It is also used to compute ordinary income from recapture and the recapture of prior year section 1231 losses.

Respondents: Individuals or households, Business or other for-profit, Farms.

Estimated Number of Respondents/Recordkeepers: 1,396,388.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—30 hr., 8 min.
Learning about the law or the form—13 hr., 10 min.
Preparing the form—18 hr., 53 min.
Copying, assembling, and sending the form to the IRS—1 hr., 20 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 88,698,566 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 97–17490 Filed 7–2–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 24, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt (BPD)

OMB Number: 1535–0012.

Form Number: PD F 1455.

Type of Review: Extension.

Title: Request by Fiduciary for Reissue of United States Savings Bonds/ Notes.

Description: PD F 1455 is used by fiduciary to request distribution of United States Savings Bonds/Notes to the person(s) entitled.

Respondents: Individuals or households.

Estimated Number of Respondents: 72,000.

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 36,000 hours.

OMB Number: 1535–0102.

Form Number: PD F 1071.

Type of Review: Extension.

Title: Certificate of Ownership of United States Bearer Securities.

Description: PD F 1071 is used to establish ownership and support a request for payment.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 500 hours.

Clearance Officer: Vicki S. Thorpe (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–17491 Filed 7–2–97; 8:45 am]

BILLING CODE 4810–40–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

June 24, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0120.

Form Number: IRS Form 1099–G.

Type of Review: Extension.

Title: Certain Government and Qualified State Tuition Program Payments.

Description: Form 1099–G is used by governments (primarily state and local) to report to the IRS (and notify recipients of) certain payments (e.g., unemployment compensation and income tax refunds). We use the information to insure that the income is being properly reported by the recipients on their returns.

Respondents: Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 2,900.

Estimated Burden Hours Per Respondent: 12 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 11,726,328 hours.

OMB Number: 1545–0195.

Form Number: IRS Form 5213.

Type of Review: Extension.

Title: Election to Postpone Determination as To Whether the Presumption Applies That an Activity is Engaged in for Profit.

Description: This form is used by individuals, partnerships, estates, trusts, and S corporations to make an election to postpone an IRS determination as to whether an activity is engaged in for profit. The election is made on Form 5213 and allows taxpayers 5 years (7 years for breeding, training, showing, or racing horses) to show a profit from an activity. The data is used to verify eligibility to make the election.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 10,730.

Estimated Burden Hours Per Respondent/Recordkeepers:

Recordkeeping—7 min.

Learning about the law or the form—7 min.

Preparing the form—10 min.

Copying, assembling, and sending the form to the IRS—20 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 7,726 hours.

OMB Number: 1545–0205.

Form Number: IRS Form 5452.

Type of Review: Extension.

Title: Corporate Report of Nondividend Distributions.

Description: Form 5452 is used by corporations to report their nontaxable distributions as required by Internal Revenue Code (IRC) 6042(d)(2). The information is used by IRS to verify that the distributions are nontaxable as claimed.

Respondents: Business or other for-profit, Farms.

Estimated Number of Respondents/ Recordkeepers: 1,700.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—19 hr., 51 min.

Learning about the law or the form—1 hr., 26 min.

Preparing the form—3 hr., 41 min.

Copying, assembling, and sending the form to the IRS—32 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 43,350 hours.

OMB Number: 1545–0495.

Form Number: IRS Form 4506–A.

Type of Review: Extension.

Title: Request for Public Inspection or Copy of Exempt Organization Tax Form.

Description: Form 4506–A is used to request a public inspection or a copy of an exempt organization tax form. It is

also used to request an aperture card of Form 990–PF.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 20,000.

Estimated Burden Hours Per Respondent/Recordkeepers:

Recordkeeping—7 min.

Learning about the law or the form—3 min.

Preparing the form—14 min.

Copying, assembling, and sending the form to the IRS—14 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 12,400 hours.

OMB Number: 1545–1008.

Form Number: IRS Form 8582.

Type of Review: Extension.

Title: Passive Activity Loss Limitations.

Description: Under section 469, losses from passive activities, to the extent that they exceed income from passive activities, cannot be deducted against nonpassive income. Form 8582 is used to figure the passive activity loss allowed and the loss to be reported on the tax return. Worksheets 1 and 2 are used to figure the amount to be entered on lines 1 and 2 of Form 8582 and worksheets 3 through 6 are used to allocate the loss allowed back to individual activities.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 4,500,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—1 hr., 5 min.

Learning about the law or the form—1 hr., 44 min.

Preparing the form—1 hr., 34 min.

Copying, assembling, and sending the form to the IRS—20 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 21,660,000 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 97–17492 Filed 7–2–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 27, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to begin the focus group interviews described below in mid July 1997, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by July 7, 1997. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1349.

Project Number: SOI–31.

Type of Review: Revision.

Title: 1997 941/940EZ TeleFile Focus Group Interviews.

Description: These focus group interviews are being conducted with user and non-users of the 941 TeleFile to determine how the 941 TeleFile system impacted the business and the potential usefulness of the planned 940EZ TeleFile system.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 60.

Estimated Burden Hours Per Response: 1 hour, 30 minutes.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 101 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 97–17493 Filed 7–2–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 27, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Departmental Offices/Office of Foreign Investment Studies

OMB Number: 1505–0146.

Form Number: TD F 90–04.1, TD F 90–04.2, and TD F 90–04.3.

Type of Review: Reinstatement.

Title: Outbound Portfolio Investment Survey.

Description: The survey will collect information on U.S. holdings of foreign long-term securities. The information will be used to help calculate the U.S. balance of payments and international investment positions, as well as for financial and monetary policy formulation. This survey is also part of an international effort coordinated by the International Monetary Fund (IMF) to improve worldwide balance of payments statistics. Respondents will be primarily the largest banks, securities dealers, and institutional investors.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents/ Recordkeepers: 2,500.

Estimated Burden Hours Per Respondent/Recordkeeper: 58 hours, 16 minutes.

Frequency of Response: Other (approximately every 5 years).

Estimated Total Reporting/ Recordkeeping Burden: 145,668 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, N.W., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–17494 Filed 7–2–97; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 23, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Departmental Offices/Office of Foreign Assets Control

OMB Number: 1505–0130.

Form Number: None.

Type of Review: Extension.

Title: Iraqi Sanctions Regulations.

Description: United Nations Security Council Resolution 986 authorizes certain transactions with Iraq. These regulations implement that resolution pursuant to the International Emergency Economic Powers Act, 50 USC 1701–1706 and the United Nations Participation Act, 22 U.S.C. 287c.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 800.

Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours, 34. minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 2,050 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, N.W., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–17500 Filed 7–2–97; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application for Certification/Exemption of Label/Bottle Approval Under the Federal Alcohol Administration Act.

DATES: Written comments should be received on or before September 2, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to William T. Moore, Product Compliance Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8140.

SUPPLEMENTARY INFORMATION:

Title: Application for Certification/Exemption of Label/Bottle Approval Under the Federal Alcohol Administration Act.

OMB Number: 1512–0092.

Form Number: ATF F 5100.31.

Abstract: The Federal Alcohol Administration Act regulates the labeling of alcoholic beverages and designates the Treasury Department to oversee compliance with regulations. This form is completed by the regulated industry and submitted to Treasury as an application to label their products. Treasury oversees label applications to prevent consumer deception and to deter falsification of unfair advertising practices on alcoholic beverages. The recordkeeping requirement for this information collection is three years.

Current Actions: ATF F 5100.31 has been revised for the purpose of clarification for the respondent. There are format changes and the instructions have been reworded. There is an increase in burden hours due to an increase in respondents.

Type of Review: Revision.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 8,624.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 28,565.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 27, 1997.

John W. Magaw,

Director.

[FR Doc. 97–17398 Filed 7–2–97; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Renewal of Firearms License.

DATES: Written comments should be received on or before September 2, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Nick Colucci, Firearms and Explosives Operations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8310.

SUPPLEMENTARY INFORMATION:

Title: Renewal of Firearms License.

OMB Number: 1512–0043.

Form Number: ATF F 8, Part II.

Abstract: The form is filed by the licensee desiring to renew a federal firearms license. It is used to identify the applicant, locate the business premises, identify the type of business conducted, and determine the eligibility of the applicant. The record retention requirement for this information collection is 3 years.

Current Actions: Revisions have been made to the form in accordance with new laws and regulations. A new question 10. has been added to the form as a result of an amendment to the Gun Control Act of 1968 (GCA) by the Violent Crime Control and Law Enforcement Act of 1994, which added a new subsection, 18 U.S.C. 922(g)(8). This section makes it unlawful for persons subject to certain restraining orders to ship, transport, possess, or receive firearms or ammunition in or affecting interstate commerce. The addition of question 11. results from the Omnibus Consolidated Appropriations Act of 1997, which amended the GCA to add a new subsection, 18 U.S.C 922(g)(9). This section makes it unlawful for any person convicted of a misdemeanor crime of domestic violence to ship, transport, possess, or receive firearms or ammunition in or affecting interstate commerce. Also, the form has been reformatted and some questions have been reworded.

Type of Review: Extension with changes.

Affected Public: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 41,300.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 13,629.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Date: June 27, 1997.

John W. Magaw,

Director.

[FR Doc. 97–17399 Filed 7–2–97; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application to Register as an Importer of U.S. Munitions Import List Articles.

DATES: Written comments should be received on or before September 2, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Debbie Lee, Firearms and Explosives Imports Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8320.

SUPPLEMENTARY INFORMATION:

Title: Application to Register as an Importer of the U.S. Munitions Import List Articles.

OMB Number: 1512–0021.

Form Number: ATF F 4587 (5330.4).

Abstract: Under 22 U.S.C. 2778 and the implementing regulations in 27 CFR Part 47, persons engaged in the business of importing firearms and ammunition, and implements of war are required to register with the Bureau of Alcohol, Tobacco and Firearms and pay a registration fee. The recordkeeping requirement associated with this information collection is 6 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 300.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 150.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 27, 1997.

John W. Magaw,

Director.

[FR Doc. 97–17400 Filed 7–2–97; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Tobacco Products Manufacturers—Notice For Tobacco Products, ATF REC 5210/12 and Records of Operations, ATF REC 5210/1.

DATES: Written comments should be received on or before September 2, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Cliff Mullen, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8181.

SUPPLEMENTARY INFORMATION:

Title: Tobacco Products Manufacturers—Notice For Tobacco Products, ATF REC 5210/12 and Records of Operations, ATF REC 5210/1.

OMB Number: 1512–0502.

Recordkeeping Requirement ID Number: ATF REC 5210/12, ATF REC 5210/1.

Abstract: ATF requires tax identification on packages or cases, which is used to validate excise tax payments and verify claims. In order to safeguard these taxes, tobacco products manufacturers are required to maintain a system of records designed to establish accountability over the tobacco products produced. The recordkeeping requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 108.

Estimated Time Per Respondent: None, records are usual and customary requirements.

Estimated Total Annual Burden Hours: 1.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 27, 1997.

John W. Magaw,

Director.

[FR Doc. 97–17401 Filed 7–2–97; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 97–55]

Revocation of Customs Broker License

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Broker License Revocation.

SUMMARY: Notice is hereby given that the Commissioner of Customs, pursuant to Section 641, Tariff Act of 1930, as amended, (19 U.S.C. 1641), and Parts 111.52 and 111.74 of the Customs Regulations, as amended (19 CFR 111.52 and 111.74), the following Customs broker license is suspended with prejudice effective May 1, 1997, through June 1, 1997.

Port	Individual	License #
Atlanta, Georgia.	Customs Advisory Services.	11565

Dated: June 26, 1997.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 97–17498 Filed 7–2–97; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Israeli-Arab Scholarship Program

ACTION: Request for proposals.

SUMMARY: The Office of Academic Programs of the United States Information Agency's (USIA's) Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply for an assistance award to provide administrative and program support services for the Israeli-Arab Scholarship Program. Organizations having less than four years experience in conducting international exchange programs may not receive grants in excess of $60,000, and therefore are ineligible to apply for this assistance award.

The Israeli-Arab Scholarship Program (IASP) is a congressionally mandated and endowed program. The grant making authority for this program is contained in Public Law 102–138, the ''Foreign Relations Authorization Act, Fiscal Years 1992 and 1993.'' The purpose of the legislation is to establish ''a program of scholarships for Israeli-Arabs to attend institutions of higher education in the United States.'' The funding authority for the program is provided through the legislation.

The Israeli-Arab Scholarship Program provides and opportunity for highly qualified Israeli-Arab graduate students to attend institutions of higher education in the U.S., providing them both a quality graduate education and an opportunity to experience American democracy and society.

Program administration involves performance of services in the following broad categories: Program Planning and Management; Recruitment/Selection Support Services; Placement and Budgeting Services; Supervision and Support Services; Special Programs Management; and Program Projection and Reporting Services.

Programs and projects must conform to Agency requirements and guidelines

outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Announcement Title and Number: All communications with USIA concerning this RFP should refer to the announcement's title and reference number E/AEN–IASP98–01.

Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Thursday, July 31, 1997. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted. Grants should begin on or about October 1, 1997.

FOR FURTHER INFORMATION, CONTACT: The Near East/South Asian Programs Branch, E/AEN, Room 212, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, telephone: 202–619–5368; fax: 202–205–2466 Internet address: lgtaylor@usia.gov, to request a Solicitation Package containing more detail. Please request required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To Download a Solicitation Package via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package via Fax on Demand: The entire Solicitation Package may be received via the Bureau's ''Grants Information Fax on demand System'', which is accessed by calling 202/401–7616. Please request a ''Catalog'' of available documents and order numbers when first entering the system.

Please specify USIA Program Officer Lydia Giles Taylor on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions: Applicants must follow all instructions given in the Solicitation Package. The original and ten (10) copies of the application should be sent to: U.S. Information Agency, Ref.: *E/AEN–IASP98–01*, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5'' diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy'', USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION:

Overview

The Israeli-Arab Scholarship Program (IASP), a congressionally mandated and endowed program, is jointly administered by USIA's Office of Academic Programs and the U.S. Information Service (USIS) in Tel Aviv, Israel. Applicants are recruited, screened, and selected by USIS Tel Aviv through a panel of host-country academics. USIA's Office of Academic Programs is responsible for the allocation of funding and policy administration. The award recipient will have responsibility for supporting the selection process, placement of applicants at academic institutions and day-to-day management of the program.

Guidelines

Program administration activities should cover the time period October 1, 1997 through September 30, 1998. The expected grantee caseload for Fiscal year 1998 is projected as follows: 6 second-year (renewal) grantees, 4 first-year (new) grantees, 6 new FY 1999 principals and 2 alternates.

Administrative Services for the Israeli-Arab Scholarship Program Must Include

I. Program Planning and Management

Includes: Development of a Cadre of Cost-Sharing Institutions; Development and Maintenance of a Financial Aid and Institutional Network; Monitoring and Adjustment of Grantee Allowances; Establishment and Maintenance of Grantee Statistical Database; Records Maintenance; Review of Grant Agreement; and Recommendation of Program Adjustments or Improvements.

II. Recruitment/Selection Support Services

Include: Materials Disbursement; Forecasting Costs; Preparing and Distributing Grant Documents and Related Forms.

III. Placement and Budgeting Services

Include: Applications Review; Candidate Evaluation/Academic Program Matching; Admissions Form Preparation/Submission; Estimation of University Expenses; Preparation and Distribution of Individual Cost Estimates; Finalization of Placements; Arranging Temporary Housing.

IV. Supervision and Support Services

Include: Oversight and Management of Grantees' Visa Status; Management of Travel Arrangements/Allowances; Accident and Illness Insurance Enrollment; Academic Monitoring; Processing of Grant Renewals, Extensions and Transfers; Disbursement of Grant Benefits; Management of Grantee Emergencies; Monitoring of Departure Plans.

V. Special Programs Management

Includes: English Language Evaluation: English Language/Orientation Enrollment; Management of Professional Enhancement Stipend; Publication and Distribution of Israeli-Arab Scholarship Program Newsletter; Publication and Distribution of Israeli-Arab Scholarship Program Handbook.

VI. Fiscal Management

Includes: Preparation and Distribution of Payments; Auditing Payments and Tuition Bills; Reviewing Accounting System; Auditing Internal Functions and Controls; Tax Assistance to Grantees; Preparation and Submission of Financial Reports.

VII. Program Projection and Reporting Services

Include: Maintenance of Grant Records (computer and paper); Preparation of Departure and Status Reports (computer and paper); Preparation of Statistical Studies and Semester Reports; Preparation of Subsequent Year Program Projections.

Proposed Budget

Organizations must submit a comprehensive line item budget based on the specific guidance in the Solicitation Package. Total award may not exceed $400,000.

Program costs are pre-determined and will be fixed at an amount not-to-exceed $345,000. (USIA will provide a budget break-down of program costs for inclusion in the proposal.) Administrative costs are limited to $55,000.

Please Note: Organizations having less than four years experience in conducting international exchange programs may not receive grants in excess of $60,000, and therefore are ineligible to apply for this assistance award.

Appicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, the USIA Office of North African, Near Eastern, and South Asian Affairs and the U.S. Information Service Intel Aviv, Israel. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Proposal Quality:* Proposals should address all program administration requirements set forth in the request for proposal and PSI (POGI).

2. *Plan of Operation:* Proposal should clearly demonstrate how the institution will manage program operations.

3. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

4. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve program objectives.

5. *Institutional Network:* proof of existing network with U.S. academic and international exchange community or demonstrated potential to develop such a network.

6. *Facilitation of Communications:* Proposal should demonstrate the organization's ability to maintain communication with grantees and to put grantee in touch with each other. Particular emphasis should also be placed on program coordination between USIA, USIS Tel Aviv and the organization.

7. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in the program's administration e.g., selection of academic institutions and geographic distribution of grantees.

8. *Understanding of Program Impact:* Proposal should address how the organization views the Israeli-Arab Scholarship Program as strengthening long-term mutual understanding.

9. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended.

10. *Cost-Effectiveness:* The overhead and administrative components of the proposal should be kept as low as possible. All other items should be necessary and appropriate.

12. *Cost-Sharing:* Proposals should maximize cost-sharing through private sector support, e.g., from academic institutions. The plan should reflect the organization's willingness and/or ability to secure tuition and fee waivers, scholarships, and financial aid for IASP grantees.

13. *Value to U.S.—Partner Country Relations:* Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: June 27, 1997.

David Whitten,

Acting, Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–17417 Filed 7–2–97; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans; Notice of Availability of Biennial Report

Under section 10(d) of Public Law 92–462 (Federal Advisory Committee Act) notice is hereby given that the biennial Report of the Department of Veterans Affairs' Advisory Committee on Women Veterans for 1996 has been issued. The Report summarizes activities of the Committee on matters relative to women veterans, and the identification of areas where further study and improvements are required. It is available for public inspection at two locations:

Federal Documents Section, Exchange and Gift Division, LM 632, Library of Congress, Washington, DC 20540
and
Department of Veterans Affairs, Center for Women Veterans, Central Office—Suite 700, 810 Vermont Avenue, NW., Washington, DC 20420

Dated: June 20, 1997.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–17415 Filed 7–2–97; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans; Notice of Availability of Annual Report

Under section 10(d) of Public Law 92–462 (Federal Advisory Committee Act) notice is hereby given that the Annual Report of the Department of Veterans Affairs' Advisory Committee of Minority Veterans for Fiscal Year 1996 has been issued. The Report summarizes activities of the Committee on matters relative to the administration of benefits, medical care services, and outreach as it relates to minority group veterans by the Department. The Report discusses the Committee's mission, goals and objectives, and makes recommendations to the Secretary. It is available for public inspection at two locations:

Federal Document Section, Exchange and Gifts Division, LM 632, Library of Congress, Washington, DC 20540

and

Department of Veterans Affairs, Center for Minority Veterans, VACO Suite 700, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: June 20, 1997.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–17416 Filed 7–2–97; 8:45 am]

BILLING CODE 8320–01–M

federal register

Thursday
July 3, 1997

Part II

Environmental Protection Agency

40 CFR Parts 141 and 142

Drinking Water Monitoring Requirements for Certain Chemical Contaminants—Chemical Monitoring Reform (CMR) and Permanent Monitoring Relief (PMR); Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL–5851–6]

RIN 2040–AC73

Drinking Water Monitoring Requirements for Certain Chemical Contaminants—Chemical Monitoring Reform (CMR) and Permanent Monitoring Relief (PMR)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: EPA is providing advance notice that it is planning to propose revising the drinking water monitoring requirements for sixty four chemical contaminants. These chemicals may occur in the source water of public drinking water systems, and are regulated on the basis of chronic health effects over a seventy year period. The purpose of the proposal would be to base the monitoring requirements for each water system on its risk of contamination, and to establish a uniform and simple sampling schedule for those systems without an apparent or significant risk of contamination.

EPA is also soliciting comments on draft Permanent Monitoring Relief (PMR) Guidelines under section 1418(b) of the Safe Drinking Water Act (the Act), as amended August 6, 1996. The Act requires EPA to issue guidelines, by August 6, 1997, for States to use in adopting monitoring relief under Sections 1418 and 1453.

EPA is also soliciting comments on certain other changes under consideration: the deadlines for decisions regarding ground water under the direct influence of surface water and associated filtration determinations; and reporting requirements for both public water systems and State regulatory agencies. These potential changes were raised by ''stakeholders'' in the drinking water community, through a number of public meetings convened to explore ways of reducing the burden created by the National Primary Drinking Water Regulations. Today's action requests comments on the ''stakeholder'' suggestions, which are described below under Suggestions for Regulatory Burden Reduction Other Than Chemical.

DATES: Written comments must be postmarked or delivered by hand by August 4, 1997. The public hearing dates are:

1. July 8, 1997, 9:00 a.m. to 5 p.m., Denver, Colorado
2. July 9, 1997, 9:00 a.m. to 5 p.m., Chicago, Illinois
3. July 22–23, 1997, 9:00 a.m. to 5 p.m., Washington, DC.

ADDRESSES: Send all written comments on this notice to the ''Chemical Monitoring Reform Comment Clerk; Water Docket MC–4101 (Docket # W–97–03); Environmental Protection Agency; 401 M Street, SW., Washington, DC 20460.'' Supporting documents for this proposed rulemaking are available for review at EPA's Water Docket; 401 M Street, SW., Washington, DC 20460. For access to the Docket materials, call (202) 260–3027 between 9 a.m. and 3:30 p.m. for an appointment, and reference ''Docket #W–97–03''.

The public hearings will be held in the following locations:

1. EPA, Region VIII, Rocky Mountain Room in the 2nd floor Conference Center, 999 18th Street, Denver, Colorado 80202
2. EPA, Region V, Lake Michigan Room (12th Floor), 77 West Jackson Blvd., Chicago, Illinois 60604
3. Wyndham Bristol Hotel, Room Potomac 3, 2430 Pennsylvania Ave. NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, toll free (800) 426–4791 for general information about, and copies of, this document. To speak to the rule manager about today's proposal, contact Mike Muse; Implementation & Assistance Division; Office of Ground Water and Drinking Water; EPA (4604), 401 M Street SW., Washington, DC 20460; telephone (202) 260–3874.

SUPPLEMENTARY INFORMATION: The Chemical Monitoring Reform portion of this document presents many possible changes to the current requirements in a detailed format, so that commenters can better assess how the concepts in this document might work in the real world. In addition, this document contains preliminary rule language so that commenters may begin to address the details of regulatory implementation. EPA is very open to suggestions for different and/or additional changes to the current requirements, and to suggestions for new or revised rule language for Chemical Monitoring Reform. After considering and incorporating the public comments, the proposed changes to the current regulations may be quite different from this document.

Concerning the Permanent Monitoring Relief Guidelines, EPA will consider the comments received in response to this notice, and will issue final guidelines by the August 6, 1997 statutory deadline. As discussed in Section I.B below, EPA anticipates that regulations may be needed in order to implement fully the Permanent Monitoring Relief guidelines. Accordingly, EPA may propose such regulations at the same time that the CMR regulations are proposed.

These changes would affect community water systems (CWSs) and non-transient, non-community water systems (NTNCWSs). Community water systems are those which serve at least 15 service connections used by year round residents, or regularly serve at least 25 year round residents e.g., cities, townships, district water authorities, private water companies serving such communities. Non-transient, non-community water systems are those which are not community water systems and which serve at least 25 of the same persons over six months of the year e.g., schools, factories or other facilities with their own separate water supply. The following table identifies the SIC code affected by this action.

Standard industrial classification description	SIC code
Water Supply	4941

If your comments pertain only to Chemical Monitoring Reform, only to the Permanent Monitoring Relief Guidelines, or only to the other ideas for burden reduction (e.g., deadlines for decisions regarding ground water under the direct influence of surface water), please indicate that in the first paragraph of your comments. Commenters are requested to submit any references cited in their comments. Commenters also are requested to submit an original and 3 copies of their written comments and enclosures.

Commenters who want receipt of their comments acknowledged should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. The Agency would prefer for commenters to type or print comments in ink. Commenters should subtitle each issue, including the citation of the rule paragraph to which it pertains e.g., ''Detection>MCL—§ 141.23(f):''.

Table of Contents

Abbreviations Used in This Document

BAT: Best Available Technology
CWS: Community Water System
EPA: Environmental Protection Agency
FR: Federal Register
IMR: Interim Monitoring Relief
IOC: Inorganic Chemical
LFB: Laboratory Fortified Blank
MCL: Maximum Contaminant Level
MDL: Method Detection Level
NPDWR: National Primary Drinking Water Regulation
NTNCWS: Non-transient, Non-community Water System
PE: Performance Evaluation
PMR: Permanent Monitoring Relief
PQL: Practical Quantitation Level
PWS: Public Water System
RDL: Reliable Detection Level
RIA: Regulatory Impact Analysis
SDWA: Safe Drinking Water Act
SMF: Standard Monitoring Framework
SWAP: Source Water Assessment Program
SWRA: Source Water Review Area
SOC: Synthetic Organic Chemical
VOC: Volatile Organic Chemical
WHP: Wellhead Protection

List of Tables

I. Summary of Today's Document

A. Chemical Monitoring Reform

The purpose of this document is to suggest regulatory changes to strengthen public health protection by reducing the chance of drinking water contamination going undetected and unaddressed, and to reduce unnecessary monitoring and reporting requirements. The reduction of unnecessary monitoring will release public resources to focus on those systems at risk of contamination, and on the contaminants posing such risk.

The current monitoring requirements, specifically those under §§ 141.23 (a) through (c) and 141.24 (f) through (k), would be replaced with a new approach that would (1) Consolidate the monitoring requirements into a sampling frequency of once every five years for those systems that States determine have very low risk of contamination, (2) require States to target the 'at risk' systems to sample at a greater frequency based on the degree of each system's vulnerability, and (3) provide for sampling during the periods of greatest vulnerability. Further, this approach would promote the implementation of source water protection to reduce systems' vulnerability.

In addition, the quality control criteria for chemical analyses would be consolidated into a separate technical criteria document that would be incorporated by reference into a final Chemical Monitoring Reform rule, as would the analytical methods and acceptance criteria for these chemicals.

B. Permanent Monitoring Relief (PMR) Guidelines

Section 1418(b) of the Safe Drinking Water Act, as amended, requires EPA to issue guidelines by August 6, 1997 for States to use in adopting Permanent Monitoring Relief. Section 1418(b) authorizes a State to offer a water system relief from the Federal monitoring requirements, in accordance with the EPA guidelines, after the State's Source Water Assessment Program has been approved by EPA and the local source water assessment has been completed.

A draft of the Permanent Monitoring Relief Guidelines is presented in this document under Section III.N. The key features are (1) Sampling waivers under which systems could receive a waiver from sampling for a five year period, if there is no risk to public health, (2) the designation of surrogate sampling points under which systems could use the results from some of their sampling points for other sampling points, and (3) relaxed monitoring for nitrate under limited conditions.

The final PMR guidelines will provide sufficient information about monitoring provisions of the PMR for a State to ensure that its Source Water Assessment Program will provide the data needed for PMR if the State intends to avail itself of the alternative monitoring program available under the PMR. However, EPA believes that to allow States to implement the final guidelines, it may be necessary to revise the monitoring requirements in 40 CFR Parts 141 and 142. EPA may need to provide in the regulations that monitoring under PMR assures compliance with applicable national primary drinking water regulations, thereby allowing States to implement a monitoring plan that differs from the current requirements. Second, certain provisions of the proposed guidelines (Section III.N of this notice) would include specific forms of monitoring flexibility and minimum elements for approvable State PMR requirements that, if such provisions are to be included in the final guidelines and be binding on States, may need conforming regulations. The Agency solicits comments on what conforming changes, if any, might be needed.

EPA may propose regulatory language to support the PMR in the **Federal Register** notice proposing the CMR regulations. The Agency expects to issue final regulations for the CMR, and if necessary the PMR, by August 1998. This time-frame for regulatory support for PMR should not pose a hardship for the States or PWSs. It will take some time for many States to comply with the statutory pre-requisites for granting PMR to its public water systems (i.e., approval of a Source Water Assessment Program, completion of the relevant source water assessments, and approval of a PMR program). The Agency would expect necessary federal and State regulations to be in place well in advance of PMR implementation.

C. Suggestions for Regulatory Burden Reduction Other Than Chemical Monitoring Reform

As part of the President's initiative to ''Reinvent Environmental Regulation'', EPA has been reviewing the National Primary Drinking Water Regulations (NPDWRs) to find opportunities for reducing the paperwork burden on public water systems and State drinking water agencies. Through public meetings, EPA has solicited input from States, water utilities, and environmental groups regarding ways to reduce this paperwork burden. That

process looked at all of EPA's NPDWRs and yielded a number of suggestions. Many of the suggestions made by these ''stakeholders'' are incorporated in the Chemical Monitoring Reform approach in this document. Some of the suggestions, however, were to make changes to other parts of the NPDWRs.

EPA believes certain other suggestions deserve further consideration, and is presenting these suggestions for comment, so the Agency can more fully evaluate their merits for possible inclusion in subsequent proposed rulemaking. The suggestions contained in this document involve deadlines for decisions regarding ground water under the direct influence of surface water and associated filtration determinations, and requirements for water system and State reporting. They can be found in Section III.Q. of this document. Stakeholder suggestions pertaining to lead and copper requirements were presented in the preamble for the proposal entitled, Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for Lead and Copper, 60FR16348, April 12, 1996.

II. Background

A. Statutory Authority

The approach outlined in this document would amend the monitoring requirements associated with certain National Primary Drinking Water Regulations (NPDWRs) established pursuant to Section 1445 of the Safe Drinking Water Act, as amended August 6, 1996 (the ''Act''). Section 1445 of the Act provides EPA with general information collection authority. Namely, ''every person who is subject to any requirement of this title ..., shall establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation to assist the Administrator in ... determining whether such person has acted or is acting in compliance with this title.''

B. Regulatory Background

EPA first regulated chemicals in drinking water by establishing maximum contaminant levels (MCLs) and sampling requirements for nine inorganic chemicals (IOCs), and six synthetic organic chemicals (SOCs) in the Interim Primary Drinking Water Regulations of 1975. In accordance with the Safe Drinking Water Act Amendments of 1986, EPA began adding to its list of regulated chemicals. In 1987, EPA adopted standards for eight volatile organic chemicals (VOCs) in the Phase I Rule. From that point on, regulations for contaminants in drinking water have been referred to as National Primary Drinking Water Regulations (NPDWRs).

EPA has since revised the standards for some chemicals, and established new standards for other chemicals, in three separate actions: Phase II Rule—January, 1991; Phase IIB Rule—July, 1991; and Phase V Rule—July, 1992. These changes would affect sixty four (64) of the chemicals for which NPDWRs have been established (13 IOCs, 30 SOCs and 21 VOCs) as listed below in Table A.

TABLE A.—CONTAMINANTS AFFECTED BY CHEMICAL MONITORING REFORM

Inorganic Chemicals (IOCs):

[1] Antimony, [2] Arsenic, [3] Asbestos, [4] Barium, [5] Beryllium, [6] Cadmium, [7] Chromium, [8] Cyanide, [9] Fluoride, [10] Mercury, [11] Nickel, [1] [12] Selenium, [13] Thallium.

Synthetic Organic Chemicals (SOCs):

[1] 2,4-D (Formula 40 Weeder 64); [2] 2,3,7,8-TCDD (Dioxin); [3] 2,4,5-TP (Silvex); [4] Alachlor (Lasso); [5] Atrazine; [6] Benzo[a]pyrene; [7] Carbofuran; [8] Chlordane; [9] Dalapon; [10] Di(2-ethylhexyl)adipate; [11] Di(2-ethylhexyl)phthalate; [12] Dibromochloropropane (DBCP); [13] Dinoseb; [14] Diquat; [15] Endothall; [16] Endrin; [17] Ethylene dibromide (EDB); [18] Glyphosate; [19] Heptachlor epoxide; [20] Heptachlor; [21] Hexachloro-cyclopentadiene; [22] Hexachlorobenzene; [23] Lindane; [24] Methoxychlor; [25] Oxamyl (Vydate); [26] Pentachlorophenol; [27] Picloram; [28] Polychlorinated Biphenyls (PCBs); [29] Simazine; [30] Toxaphene.

Volatile Organic Chemicals (VOCs):

[1] 1,1-Dichloroethylene; [2] 1,1,2-Trichloroethane; [3] 1,1,1-Trichloroethane; [4] 1,2,4-Trichlorobenzene; [5] 1,2-Dichloropropane; [6] 1,2-Dichloroethane; [7] Benzene; [8] Carbon tetrachloride; [9] cis-1,2-Dichloroethylene; [10] Dichloromethane; [11] Ethylbenzene; [12] Monochlorobenzene; [13] o-Dichlorobenzene; [14] p-Dichlorobenzene; [15] Styrene; [16] Tetrachloroethylene; [17] Toluene; [18] trans-1,2-Dichloroethylene; [19] Trichloroethylene; [20] Vinyl Chloride; [21] Xylenes.

When EPA published the Phase II rule in January, 1991, it established the Standard Monitoring Framework. This framework is in effect today, and applies to all chemicals regulated under the Phase I, II, IIB and V rules, including those regulated under previous IPDWRs—except arsenic. [2] The Standard Monitoring Framework was intended to provide a uniform monitoring structure for all current and subsequent NPDWRs involving chemical contaminants. However, it soon became apparent that the Standard Monitoring Framework (a) could be redesigned to identify contaminated drinking water more quickly and effectively, (b) is too prescriptive in several areas, and (c) is complex and difficult to implement efficiently.

It also appears that the high rates of water supply contamination anticipated in the late 1980s and early 1990's, upon which the Standard Monitoring Framework is largely based (e.g., EPA cited VOC contamination of about 20% of the water systems), have not been borne out by the sampling results since then. According to the data in EPA's national data base for tracking violations (the Safe Drinking Water Information System—SDWIS), an average of about ½% or less of the systems that sample for the sixty four chemicals, had MCL violations for any one of those chemicals during 1993–1995.[3] Although the data available to EPA are not definitive, they are significant because they represent thousands of systems. EPA invites the submittal of sampling data to support or refute the preliminary findings upon which these changes are based.

(1) Monitoring Results from Phase I Unregulated Contaminants in 1988–1991

The following discussion presents chemical occurrence data that EPA States gathered from public drinking water systems. The sampling results from thirty three States [4] were compiled

[1] Although the MCL for Nickel has been stayed by a Federal Court, the monitoring requirements remain in force.

[2] Arsenic was excluded from the Standard Monitoring Framework at the time Phase II was promulgated, because revision of the arsenic MCL was thought to be imminent at that time. As indicated by Table A, these changes include arsenic.

[3] Based on 28 States reporting.

[4] The following States, Territories and home rule jurisdictions contributed data: Alabama, Arkansas,

for fourteen organic chemicals. These chemicals were sampled as unregulated contaminants under the Phase I rule in 1988 through 1991 (A Statistical Survey of the Unregulated Contaminant Data, prepared by Computer Sciences Corporation). Twelve VOCs have since been regulated, and EDB and DBCP have since been regulated as SOCs, under the Phase II, IIB or V rules.

For systems served by surface water, these data show that thirteen of the fourteen contaminants were detected at less than 3% of the facilities tested, and that the fourteenth contaminant (dichloromethane) was detected at slightly more than 5% of the facilities (see Table B). In ground water, the data show that only one contaminant (tetrachloroethylene) was detected at more than 3% of the facilities sampled (see Table C). In summary, only a small percentage of the facilities sampled has detected any of these contaminants.

TABLE B.—PHASE I SAMPLING RESULTS OF ORGANIC COMPOUNDS IN SURFACE WATER (1988–1991)

Chemical name and (phase)	No. sites sampled [5]	No. sites w/ detects	Percent sites w/detects
cis/trans-1,2-Dichloroethylene (2)	1,670	15	0.90%
Dichloromethane (5)	1,588	81	5.10
1,2-Dichloropropane (2)	1,581	5	0.32
Ethylbenzene (2)	1,526	15	0.98
Ethylene Dibromide [EDB] (2)	1,180	34	2.88
Dibromochloropropane [DBCP] (2)	1,204	28	2.33
Monochlorobenzene (2)	1,531	5	0.33
o-Dichlorobenzene (2)	1,504	3	0.20
Styrene (2)	1,496	4	0.27
Tetrachloroethylene (2)	1,579	32	2.03
Toluene (2)	1,529	37	2.42
1,2,4-Trichlorobenzene (5)	1,119	0	0.00
1,1,2-Trichloroethane (5)	1,523	20	1.31
Xylenes (2)	1,606	23	1.43

TABLE C.—PHASE I SAMPLING RESULTS OF ORGANIC COMPOUNDS IN GROUND WATER (1988–1991)

Chemical name and (phase)	No. sites sampled	No. sites w/ detects	Percent sites w/detects
cis/trans-1,2-Dichloroethylene (2)	12,798	205	1.60
Dichloromethane (5)	12,263	294	2.40
1,2-Dichloropropane (2)	12,213	42	0.34
Ethylbenzene (2)	12,219	107	0.88
Ethylene Dibromide [EDB] (2)	9,339	61	0.65
Dibromochloropropane [DBCP] (2)	9,293	40	0.43
Monochlorobenzene (2)	12,215	14	0.11
o-Dichlorobenzene (2)	12,162	8	0.07
Styrene (2)	12,092	29	0.24
Tetrachloroethylene (2)	12,349	447	3.62
Toluene (2)	12,218	222	1.82
1,2,4-Trichlorobenzene (5)	11,535	16	0.14
1,1,2-Trichloroethane (5)	12,211	11	0.09
Xylenes (2)	12,743	150	1.18

As shown in Tables D and E, the rates of detection also vary from State to State.[6] In Table D, the detection of ethylene dibromide (EDB) in ground water ranges from < 1% of the facilities sampled in 13 of 17 States to 3.4% of the facilities in North Carolina and 12.5% of the facilities in Alabama. In Table E, the variation of ethylbenzene detections in ground water ranges from less than 1% of the facilities sampled in 12 of 20 States to 5%—5.5% in Alabama, Missouri and North Carolina.

Colorado, Delaware, District of Columbia, *Florida*, Georgia, Hawaii, Illinois, *Indiana*, Louisiana, Maryland, *Massachusetts*, Missouri, *Nebraska*, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, Virgin Islands, Washington, West Virginia and Wyoming. The *underlined* States reported only results showing detection. They are included here because the data were taken from a table in which the sampling results were consolidated for all the States and it was impossible to separate these States out.

[5] The report from which this data is taken describes a point as the ''number of unique sample sites and collection points'' for each water system.

[6] States reporting only results showing detections have been excluded from Tables D and E, because the data presented to EPA allowed us to identify and delete these States. Otherwise, these tables include data from the States in which laboratories reported the results of analyzing one or more samples for these specific analytes.

TABLE D.—PHASE I SAMPLING RESULTS FOR ETHYLENE DIBROMIDE [EDB] IN GROUND WATER (1988–1991)

State name	Number of sites Sampled	Number of sites w/detects	Percent of sites w/detects
Alabama	160	20	12.50
Colorado	18	0	0.00
Delaware	132	0	0.00
Minnesota	119	0	0.00
Missouri	130	0	0.00
North Carolina	383	13	3.39
North Dakota	374	0	0.00
Nevada	33	0	0.00
New Mexico	968	0	0.00
New York	378	1	0.26
Ohio	5,747	3	0.05
Pennsylvania	359	6	1.67
Rhode Island	159	0	0.00
South Dakota	17	0	0.00
West Virginia	97	0	0.00
Wyoming	247	0	0.00

TABLE E.—PHASE I SAMPLING RESULTS FOR ETHYLBENZENE IN GROUND WATER 1988–1991

State name	No. sites sampled	No. sites w/ detects	Percent sites w/ detects
Alabama	160	8	5.00
Colorado	30	0	0.00
Delaware	130	0	0.00
Hawaii	28	0	0.00
Maryland	131	2	1.53
Minnesota	117	1	0.85
Missouri	264	14	5.30
North Carolina	384	21	5.47
North Dakota	414	2	0.48
Nevada	58	0	0.00
New Mexico	1,217	10	0.82
New York	519	0	0.00
Ohio	5,747	22	0.38
Pennsylvania	371	1	0.27
Rhode Island	166	2	1.20
South Dakota	17	0	0.00
Washington	2,112	4	0.19
West Virginia	97	1	1.03
Wyoming	247	9	3.64

The data above have several shortcomings, including the fact that they are not nationally representative. The reasons for this include (1) five States reported only positive results, which are included in Tables B and C,[7] and (2) the laboratory sensitivity in detecting each contaminant is unknown, but can be assumed to vary from one State to the next. The first factor tends to skew the data in Tables B and C to an uncertain extent in favor of higher detection rates than are likely to be found in data representing a cross section of systems. The effect of the second factor is unknown. Further, the samples were probably not collected during the periods of greatest vulnerability, and many VOCs may evaporate from surface water, which may skew the results in favor of lower detection rates. Nevertheless, this is one of the largest collections of data available today, and provides substantial support for the initial conclusion that relatively few systems are contaminated.

(2) Sampling Results for Organic Compounds From 1992–1994

Several States have volunteered compilations of their sampling results for organic chemicals.[8] A detailed presentation of this data is available in the docket under, Sampling Results for Organic Compounds from 1992–1994. These results indicate VOC contamination rates that are significantly lower than those reported from the Phase I data. This difference may be due to improved waste solvent management practices mandated under the Resource Conservation & Recovery Act (RCRA), and to the closure of many of the contaminated wells identified by the Phase I monitoring.

An aggregation of these data for eleven States,[9] Table F, shows that, for

[7] Florida, Indiana, Massachusetts, Michigan and Nebraska.

[8] Although States have been sampling for most of the IOCs for 20 years, few provided useful compilations. Most IOC occurrence is geologically based, and therefore not subject to rapid change. Today's notice would represent the first set of national drinking water monitoring requirements to recognize and account for the potential of IOCs to occur as a result of human activity.

[9] Alabama, Alaska, Arkansas, California, Georgia, Kansas, Massachusetts, Mississippi, New Jersey, New Mexico and Oregon are the States that have volunteered data to the Association of State Drinking Water Administrators (ASDWA). They do not necessarily represent a valid cross section of all States, and the data for any one State may not represent a valid cross section for that State, but

a very high percentage of the several thousand sites sampled, none of the organic chemicals affected by these changes was detected. Only three VOCs were detected at more than 2% of the sites sampled ('boxed' numbers in right column). Exceedance of the MCL averaged less than 1% of the sampling points for each VOC (bottom row, second column from the right).

TABLE F.—AGGREGATED VOC COMPLIANCE SAMPLING DATA FROM SELECTED STATES

Chemical name and (phase)	Number of sites sampled	Percent of sites w/detects < MCL	Percent of sites w/detects > MCL	Total percent of sites w/detects
Benzene (1)	41,742	0.52	0.11	0.63
Carbon Tetrachloride (1)	41,531	0.45	0.16	0.61
cis-1,2-Dichloroethylene (2)	38,404	1.11	0.02	1.13
1,2-Dichloroethane (1)	41,501	0.58	0.10	0.68
1,1-Dichloroethylene (1)	41,514	0.78	0.08	0.85
Dichloromethane (5)	41,506	1.13	0.13	1.26
1,2-Dichloropropane (2)	40,778	0.29	0.01	0.30
Ethylbenzene (2)	41,240	0.54	0.00	0.55
Monochlorobenzene (2)	41,713	0.12	0.00	0.12
o-Dichlorobenzene (2)	41,313	0.10	0.00	0.10
p-dichlorobenzene (1)	41,326	0.39	0.00	0.39
Styrene (2)	36,455	0.13	0.00	0.13
trans-1,2-Dichloroethylene (2)	41,453	0.14	0.00	0.14
Tetrachloroethylene (2)	41,789	3.34	0.61	3.96
Toluene (2)	41,233	1.05	0.01	1.06
1,2,4-Trichlorobenzene (5)	36,388	0.09	0.00	0.09
1,1,1-Trichloroethane (5)	41,523	2.61	0.00	2.62
1,1,2-Trichloroethane (5)	40,990	0.09	0.02	0.11
Trichloroethylene [TCE] (1)	41,803	3.11	0.59	3.70
Vinyl Chloride (1)	41,471	0.06	0.05	0.11
Xylenes (2)	41,059	0.97	0.00	0.97

In the 1991 regulation, EPA offered no estimate of drinking water contamination by synthetic organic chemicals (SOCs), such as pesticides. Table G presents data gathered from ten States.[10] Only three SOCs were detected at more than 2% of the sites—Dibromochloropropane (DBCP), Di(2-ethylhexyl)-phthalate, and Di(2-ethylhexyl)-adipate. Only DBCP and phthalate exceeded the MCL at more than ½% of the sites sampled. Virtually all the DBCP detections were in California, where the product was produced and heavily used into the 1970s. Many of the phthalate and adipate detections are thought to be due to plasticizers leaching from plastic laboratory equipment containers and tubing, rather than from source water contamination.

As before, these data have several shortcomings, which include the fact that they may not be representative of the nation. The reasons for this are that (1) the data were volunteered by only a few States, and (2) the detection levels vary among these States. The effect of these factors is unknown. Also, it is unknown whether the systems for which sampling results were reported are representative of those in each State, or whether the sampling was targeted to the periods of greatest vulnerability. Based on this information, EPA believes that relatively few systems are contaminated with SOCs.

TABLE G.—AGGREGATED SOC COMPLIANCE SAMPLING DATA FROM SELECTED STATES

Chemical name and (phase)	Number of sites sampled	Percent of sites w/detects < MCL	Percent of sites w/detects > MCL	Total percent of sites w/detects
Alachlor (2)	8,798	0.13	0.00	0.13
Atrazine (2)	9,596	0.85	0.00	0.85
Benzo[a]pyrene (5)	6,074	0.26	0.00	0.26
Carbofuran (2)	8,214	0.28	0.00	0.28
Chlordane (2)	9,324	0.02	0.00	0.02
Dalapon (5)	7,161	0.47	0.00	0.47
Dibromochloropropane [DBCP] (2)	10,187	2.95	1.36	4.32
Di(2-ethylhexyl)-adipate (5)	4,573	2.01	0.00	2.01
Di(2-ethylhexyl)-phthalate (5)	6,556	2.81	0.78	3.58
Dinoseb (5)	7,242	0.33	0.00	0.33
Dioxin [2,3,7,8-TCDD] (5)	1,165	0.00	0.00	0.00
Diquat (5)	5,592	1.07	0.02	1.09
Endothall (5)	5,424	0.04	0.00	0.04
Endrin (5)	9,229	0.26	0.00	0.26
Ethylene Dibromide [EDB] (2)	10,184	0.16	0.36	0.52

these data do represent the most complete and the most current information that EPA has received.

[10] Alabama, Alaska, Arkansas, California, Georgia, Kansas, Mississippi, Oregon, New Jersey and Wisconsin are the States that have volunteered data to the Association of State Drinking Water Administrators (ASDWA). They do not necessarily represent a valid cross section of all States, and the data for any one State may not represent a valid cross section for that State, but these data do represent the most complete and the most current information that EPA has received.

TABLE G.—AGGREGATED SOC COMPLIANCE SAMPLING DATA FROM SELECTED STATES—Continued

Chemical name and (phase)	Number of sites sampled	Percent of sites w/detects < MCL	Percent of sites w/detects > MCL	Total percent of sites w/detects
Glyphosate (5)	6,796	0.06	0.00	0.06
Heptachlor (2)	8,770	0.06	0.01	0.07
Heptachlor Epoxide (2)	8,773	0.13	0.02	0.15
Hexachlorobenzene (5)	7,651	0.01	0.00	0.01
Hexachlorocyclopentadiene (5)	7,340	0.07	0.00	0.07
Lindane (2)	7,369	0.20	0.00	0.20
Methoxychlor (2)	9,224	0.09	0.00	0.09
Oxamyl (5)	7,626	0.01	0.00	0.01
Picloram (5)	4,602	0.02	0.00	0.02
Pentachlorophenol (2)	6,428	0.06	0.00	0.06
Polychlorinated Biphenyls [PCBs] (2)	7,945	0.04	0.01	0.05
Silvex [2,4,5-TP] (2)	8,522	0.55	0.00	0.55
Simazine (5)	9,608	0.23	0.01	0.24
Toxaphene (2)	7,373	0.04	0.00	0.04
2,4-D (2)	8,739	0.47	0.00	0.47
Avg. % Detections	.....	0.46	0.09	0.54

In summary, EPA and the States have been discussing ways to reduce unnecessary monitoring requirements and to use chemical monitoring resources more efficiently since late 1992. EPA also sought input from outside organizations through public forums. The sampling results summarized above indicate that few systems are contaminated and that contamination levels vary widely among States. EPA believes that public resources can be used more efficiently by allowing States to focus on contaminated systems and systems at relatively high risk of contamination.

C. Overview of Approach for Chemical Monitoring Reform, Permanent Monitoring Relief and Anticipated Impact on Systems and States

The approach outlined in this document would result in new monitoring requirements, and refine the required laboratory practices for the contaminants listed in Table A, above.[11] These new requirements would replace the current requirements for Inorganic Chemicals (IOCs), Synthetic Organic Chemicals (SOCs) and Volatile Organic Chemicals (VOCs).[12] The new monitoring requirements would be consolidated under one section (§ 141.23). The current monitoring requirements for nitrate and nitrite[13] would remain unchanged, but would be moved to § 141.24(a). The maximum contaminant levels (MCLs) and designations of best available technology (BAT) would remain unaffected, as would the monitoring requirements for unregulated contaminants. All the provisions for radionuclides would remain unaffected, as would the requirements for lead and copper, for total trihalomethanes, and for microbial contaminants. The quality control criteria for chemical analyses would be consolidated in a separate technical criteria document incorporated by reference into the rule, as would the analytical methods and acceptance criteria for these chemicals. Note that EPA may, in a separate action, reformat all of the drinking water regulations in Part 141 and that would require the citations to change accordingly.

Chemical Monitoring Reform is based on six concepts. (1) Some systems are not sampling at the appropriate time of year or with sufficient frequency to detect significant levels of contamination. Several reports, including a U.S.G.S. study of the Mississippi River Basin, entitled Contaminants in the Mississippi River, 1987–1992, U.S.G.S. Circular 1133, 1995, and an Environmental Working Group (EWG) study entitled Weed Killers by the Glass, document springtime peaks in pesticide contamination of surface water supplies. (2) The percentage of systems that are contaminated is very low. The sampling data that support this view are summarized under Regulatory Background and included in the record for this document. (3) Public resources should be focused more on the systems that are contaminated or at risk of contamination, and less on systems that have low risk of contamination. (4) Because of their first hand knowledge of each system's operating environment and vulnerability, States are better able than EPA to determine which systems are at risk of contamination and which are not. For the same reason, States are also better able to determine the time of year and frequency of sampling that are most likely to detect contamination at its highest levels. (5) Source water protection measures should be expanded to minimize the number of systems contaminated in the future. (6) The current requirements are complex, and should be streamlined.

EPA is considering addressing these concepts by revising the Federal monitoring framework, within which States operate, to provide States the flexibility to focus their resources on systems at risk of contamination. This would be accomplished by consolidating the baseline sampling requirements for all contaminants and all classes of systems into a single five year frequency, except for the 'at risk' systems. States would be assigned the responsibility to review the vulnerability of all their systems, and to schedule the 'at risk' systems to sample more frequently than once every five years based on the degree of each system's vulnerability. Further, all systems would generally be required to sample during the periods of greatest vulnerability as directed by the State. This would reduce the chance of contamination going undetected, and hence unaddressed.

The development of these system-specific sampling schedules will typically involve the identification of potential contamination source(s) and an assessment of contaminant use patterns and the resulting periods of greatest vulnerability based on the management of those sources and intervening hydrogeologic or climatic features. This targeting, assessment and

[11] The MCLs for these contaminants are listed under 40 CFR 141.11(b), 141.61(a), 141.61(c), 141.62(b)(1)–(6) and 141.62(b)(10)–(15).

[12] These requirements currently appear under §§ 141.23(a)–(c) and 141.24(f)–(k).

[13] Currently under §§ 141.23(d) and 141.23(e)

scheduling activity closely parallels the efforts required under State Source Water Assessment Programs,[14] and can be accomplished most efficiently by conducting a single assessment under both programs.

If the monitoring results for the systems sampling every five years are below ½ of the MCL, the systems would continue sampling every five years. If their sampling results are equal to or above ½ of the MCL, the systems would sample more frequently as directed by the State.

In their primacy applications to adopt Chemical Monitoring Reform, States would describe their programs to screen all systems and identify and schedule ''at risk'' systems for increased sampling, to determine the periods of greatest vulnerability, and to determine whether and how to schedule increased sampling for systems exceeding the trigger level. These State program descriptions would then undergo public review and comment, before their submittal to EPA for approval. EPA's review of the primacy applications would assure that each State has an effective plan, and the legal authority, to implement these provisions. As a last resort, EPA may intervene to schedule increased sampling for individual systems at risk of contamination, if the State fails to act. Table H highlights the main features of the Chemical Monitoring Reform approach in a flow chart.

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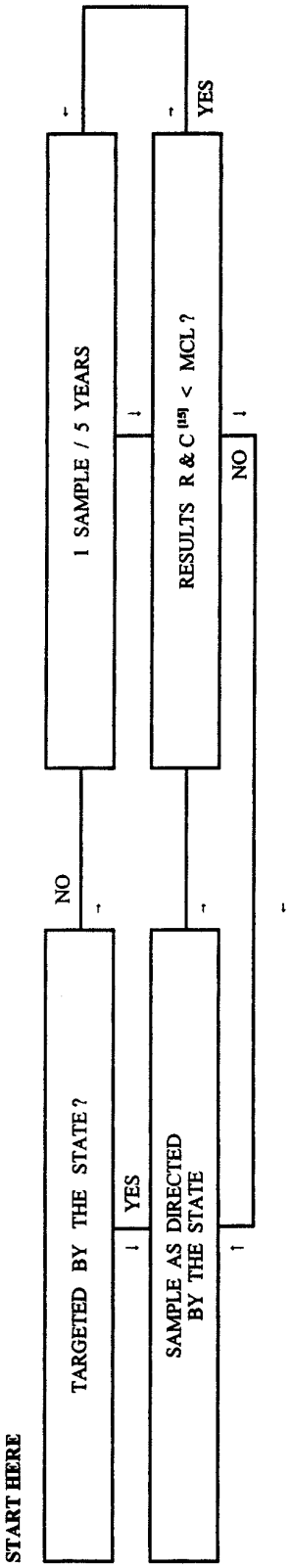
[14] State Source Water Assessment Programs are mandated under section 1453 of the Act.

TABLE H: CHEMICAL MONITORING REFORM
Sampling Frequency Decision Diagram



[15] R & C means "reliably and consistently".

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EPA expects that States will take advantage of the simplicity of today's approach. Table I illustrates the current sampling requirements starting in 1996 for most systems.[16] There are different sampling frequencies for IOCs, SOCs and VOCs. For IOCs and VOCs, the requirements vary by type of source water i.e., surface water or ground water. For SOCs, the requirements vary by size of system i.e., larger or smaller than 3,300. As with Chemical Monitoring Reform, these requirements apply to each sampling point, and many small systems have three or four sampling points.

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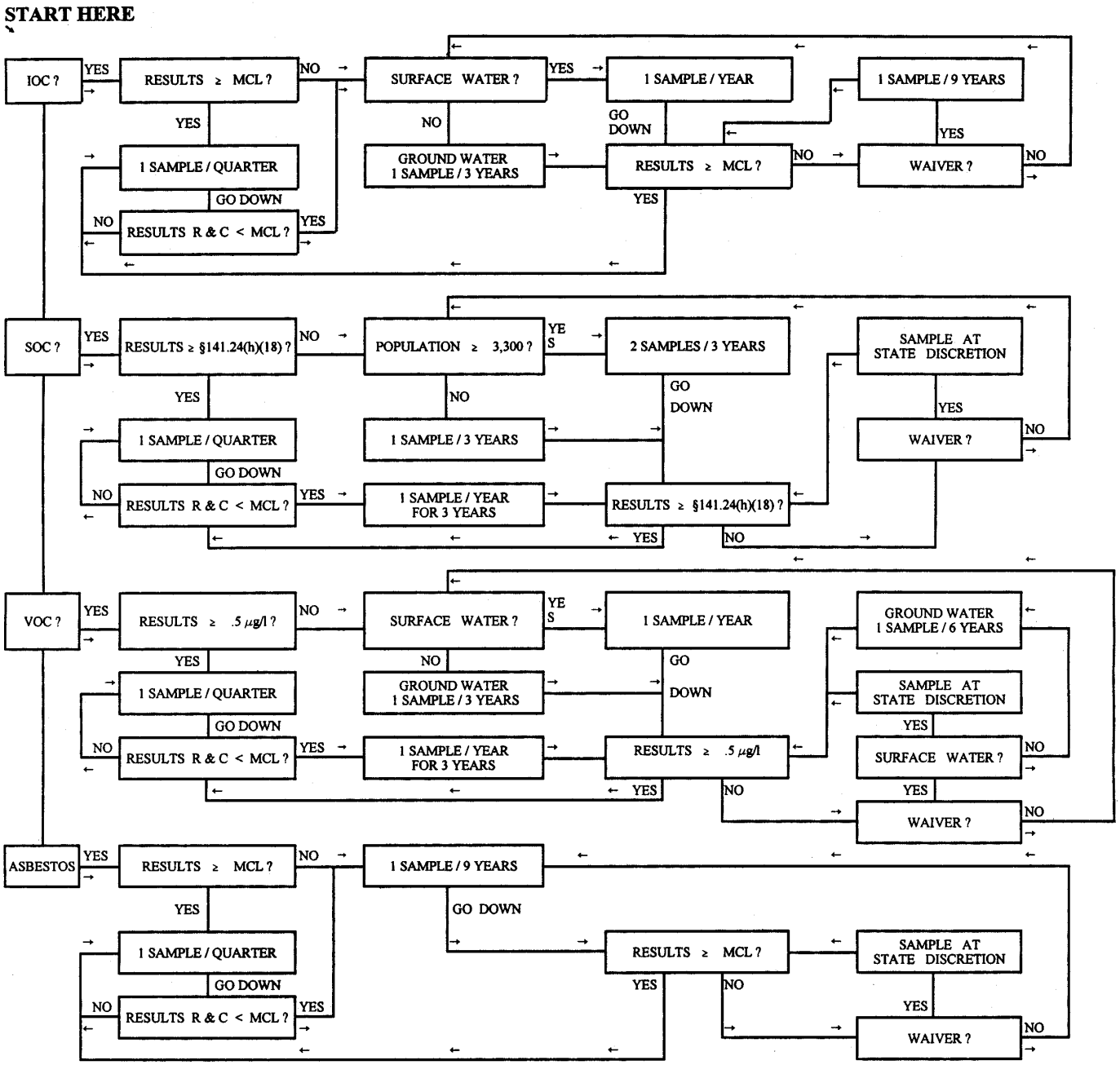
TABLE I: STANDARD MONITORING FRAMEWORK
Repeat Sampling Frequency Decision Diagram



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[16] Under the Phase V rule, systems serving < 150 service connections are not required to begin sampling for the Phase V contaminants until 1996. However, almost all States incorporated the sampling schedules of these systems into the sampling schedules under Phase II, which began in 1993, in the interests of administrative simplicity.

Before EPA finished developing these changes for Chemical Monitoring Reform, Congress enacted the 1996 Amendments to the Safe Drinking Water Act. The Amendments that are functionally related to Chemical Monitoring Reform are discussed in Section III.M. Through one of these amendments,[17] Congress authorized States that have received EPA approval of their Source Water Assessment Programs to offer Permanent Monitoring Relief to public water systems. The systems must have completed their source water assessments under the State program to be eligible for Permanent Monitoring Relief.[18] Congress also directed EPA to publish guidelines by August 6, 1997, for States to follow in developing their PMR requirements.

The new requirements of Chemical Monitoring Reform would be complemented by the draft Permanent Monitoring Relief (PMR) Guidelines in Section III.N., which will allow States to offer additional monitoring relief under specific conditions. Under the draft PMR guidelines in this document, States could allow systems to forgo monitoring of individual chemicals at specified sampling points during a five year period, either by granting a waiver, or by allowing the use of surrogate sampling results from other points. Systems could also be allowed to reduce the sampling frequency for nitrate under limited circumstances. In all cases, the State would make system-specific determinations in accordance with the PMR Guidelines.

The draft PMR guidelines provide, generally, that systems that qualify for waivers will be those with long records of no detection, and for which a vulnerability assessment unambiguously shows that the system is not at risk of contamination. Monitoring results from a sampling point(s), or from a group of points, that are used as surrogates for the results from other sampling points, will be from samples of the most vulnerable portion of the same source water serving all of the sampling points. Reduced nitrate sampling will be allowed only where the sampling results over a long period are very low and the State determines that the prognosis is for more of the same.

D. Anticipated Impact on Systems and States

EPA expects that States will support this approach because it provides flexibility to allocate more of their resources to contaminated systems and systems at risk of contamination, by one or more chemicals, and to reduce the monitoring burden for those systems where specific chemicals do not pose a risk to public health. For example, the same system may be at risk of contamination by certain pesticides, but have a very low risk of contamination by the other chemicals. By reducing the sampling burden at that system to one sample every five years for the low risk chemicals, the State can often 'buy enough economic elbow room' to increase the sampling frequency for the high risk pesticides without imposing a significant net increase in monitoring burden. In many cases, even where the sampling for one or more contaminants under a single laboratory method is increased, the net effect for the system may be a decrease in overall sampling costs.

EPA believes that most systems, including very small systems, would have a net decrease in sampling burden and cost and that only a small percentage of systems would have a net increase in sampling burden. Further, that net increase would occur only where the State assessment of public health risk indicates that the increase is warranted as an appropriate response to identified risk. For States, EPA believes that the net program burden would also be reduced, because the aggregate reduction in sampling frequencies would reduce the burden of tracking compliance with the sampling requirements, even though States would be required to develop plans for identifying at risk systems. This net reduction in sampling cost for the 64 chronic contaminants may provide further ''elbow room'' for systems and States to concentrate on higher priority contaminants. EPA seeks comment on this summary of the net effect of today's approach on system and State program burden.

III. Detailed Explanation of Draft Changes to Chemical Monitoring Requirements

A. Affected Water Systems

Under § 141.23 of these changes, the chemical monitoring requirements would apply to all community water systems (CWSs) and non-transient, non-community water systems (NTNCWSs); this is the same as the current rule. Community water systems are those which serve at least 15 service connections used by year round residents, or regularly serve at least 25 year round residents e.g., cities, townships, district water authorities, and private water companies serving such communities. Non-transient, non-community water systems are those which are not community water systems, and which serve at least 25 of the same persons over six months of the year e.g., schools, factories or other facilities with their own separate water supply. Henceforth in this discussion, CWSs and NTNCWSs will be referred to collectively as water systems or systems.

B. Sampling Points

Under § 141.23(a) of these changes, all water systems would sample at each entry point to the distribution system after treatment. Under the PMR guidelines, exceptions to this may be allowed. However, some States may require sampling at each source water withdrawal point in order to quickly identify contaminated sources and initiate remedial action. States could establish alternative or additional sampling points, as long as the water delivered to the consumer is tested; this is the same as the current rule.

In addition, systems would sample at any sampling point the State designates in addition to the entry point to the distribution system. For example, systems may be vulnerable to contamination from the asbestos cement pipes in the distribution system, or to infiltration where leaking solvents have dissolved portions of polyvinyl piping. States could address these situations by determining where systems must sample in addition to the entry point to the distribution system.

C. Time of Monitoring

Under § 141.23(b) of these changes, sampling would generally be conducted during the periods of greatest vulnerability, according to a schedule specified by the State. Periods of greatest vulnerability mean the periods during which contamination is most likely to occur at the highest concentration at a particular sampling point, based on the history of relevant factors for that sampling point e.g., U.S. Weather Bureau rainfall averages, local pesticide application practices.

Under the current requirements, systems must sample according to nationally uniform schedules, based on prior sampling results and other factors (see 56 FR 3600–3612, January 30, 1991). The most frequent sampling is quarterly, which is designed to account for the seasonal variation in contaminant concentrations. Systems may satisfy this requirement by sampling at any time during each quarter. If systems are not sampling quarterly, they are sampling annually, triennially or less frequently, depending

[17] See section1418(b).

[18] See section 1453(a)(3)

on the type of system and the contaminant.

Because the current requirements do not specify the time of sampling more precisely, contamination may go undetected; this is especially true for systems served by surface water (particularly river systems), or by ground water under the direct influence of surface water. For example, pesticides are typically applied during the Spring and Summer months and a high frequency series of sampling results from surface water systems during this period may show frequent spikes of contamination from runoff. However, a system sampling in early April may miss the contamination, and have a false sense of security about the safety of its drinking water.

Today's approach would remedy this potential problem by assigning States the responsibility to schedule sampling during the periods of greatest vulnerability. This responsibility would require States to use sound science in assessing local patterns of contaminant use, where there are systems susceptible to significant seasonal variation in contaminant levels. The State set asides that are available from the new State Revolving Fund established under the 1996 Amendments to the Safe Drinking Water Act, for conducting source water assessments, could be used to assist States in making these determinations. EPA expects that the State schedules would evolve toward greater precision based on State experience and the growing knowledge of local industrial and agricultural practices.

There has been some concern expressed about the workload impact on the capacity of laboratories to handle a large number of samples in a short period of time. Two factors mitigate this issue. First, the number of systems that are scheduled to sample more frequently than once every five years should not be great, and sampling for the other systems, which constitute the great majority of systems, can be divided over a five year period i.e., only a fifth of the systems under the five year sampling frequency would sample each year. Second, many systems (about 80%) are served by water supplies that are not subject to significant fluctuation over time e.g., deep ground water systems in geological settings other than fractured bedrock. States could schedule these systems to sample at different periods than the surface water systems (i.e., Autumn and Winter) to further balance the work load.

EPA intends to prepare technical guidance, in consultation with the States, to assist them in scheduling sampling during the periods of greatest vulnerability, if this approach is promulgated.

D. Responsibility to Provide Information

Under § 141.23(c) of these changes, systems would be required to provide any information requested by the State. States may need information they do not have in their files to decide whether a system should sample more frequently than every five years. Failure by a system to provide this information would be cause for the State to schedule the system for increased sampling.

The requirement to report all sampling results, including detections and non-detections, would be continued. EPA would clarify this provision by specifying that detections equal to or greater than the laboratory's MDL [23] must be reported as detections. The reporting of detections is necessary because, if contamination is detected, it means the sampling point is vulnerable to contamination. States need this information for determining which systems may need to sample more frequently than every five years.

EPA recognizes that some detections at the MDL may be incorrectly identified as to the chemical involved, owing to the difficulty of qualitatively characterizing contamination at that level. This is a general problem that can occur at any level, and that gets worse as the level of contamination gets lower i.e., closer to the MDL. But, it is also true that detection at the MDL means there is chemical contamination in the sample. States could recommend that systems direct their laboratories to use qualitative confirmation techniques to verify or invalidate all detections (see Methods Development and Implementation for the National Pesticides Survey, Munch, D.J., Graves, R.L., Maxey, R.A., and Engel, T.M., *Environmental Science Technology*, Vol. 24, No. 10, 1990. pp.1450–1451).

E. Mandatory Monitoring

Under § 141.23(d)(1) of these changes, as Chemical Monitoring Reform is implemented, systems would sample according to schedules specified by the State. If the State has made a screening decision and informed the system that the State will not specify a schedule for increased monitoring, the system would sample at least once every five years at each sampling point and this sampling would be conducted during the periods of greatest vulnerability as determined by the State. If the State does not specify a period of greatest vulnerability, the system is responsible for doing so, and must describe to the State its risk-based reasons for the period it specified. For example, a system might sample at an appropriate time in May because it knows that is the peak period of pesticide application.

Sampling during the period of greatest vulnerability may require some systems to perform the same test more than once. This is because contaminants may have different periods of vulnerability and if they are covered by the same analytical method, the same test would have to be repeated. EPA seeks comment on whether this multi-period sampling might impose a significant burden, and if it would, specific examples of the burden and concrete proposals as to what might be done to reduce the burden while maintaining the capacity to monitor during vulnerable periods.

This approach is different than the current requirements, under which the systems must sample according to a nationally uniform schedule (see 40 CFR, §§ 141.23 through 24). There are four reasons why EPA is considering moving from current monitoring requirements to relying on States to schedule system specific monitoring requirements.

First, States have gained a far more complete understanding of drinking water quality as it is affected by these chemicals. Today, most systems have completed several rounds of sampling or they have been granted sampling waivers based on the State's assessment of their vulnerability to contamination. States have established a base of information and experience related to the local conditions of individual water systems within each State that did not exist in 1991. Therefore, the level of detail in the current Federal monitoring requirements may no longer be necessary.

Second, the compliance sampling results available today indicate that the number of drinking water sources contaminated with one of the chemicals affected by these changes is very low. As noted in the background discussion, the contamination of public water systems by any of the regulated organic chemicals in the systems for which sampling data was provided ranges from 5% to less than 0.5 %, and averages less than 1%.

Third, the current monitoring requirements are complex, as illustrated in the monitoring decision diagram in Table I, above. This complexity is the result of establishing nationally uniform monitoring requirements that account for the differences among types and sizes of systems and contaminants.

[23] Method Detection Limit (MDLs) are defined under 40 CFR Part 136, Appendix B.

There are sixty four chemicals, thirty two trigger levels, two types of source water (surface water, ground water), and two sizes of systems (greater than 3,300, less than 3,300).

Fourth, the current monitoring requirements assume that all systems are vulnerable to contamination, and require each system to sample at relatively high frequencies, unless the State reduces the sampling frequency by granting a sampling waiver. In order to provide relief to systems that are not vulnerable, many States have invested resources to design and implement sampling waiver programs. That investment will now assist them to narrow the focus to those water systems that are already contaminated or at risk of contamination.

Rather than initially presuming vulnerability of all systems, States' screening review should be neutral, but looking to good scientific data from State waiver programs, wellhead protection programs, source water assessments, and the like for a reasonably substantive basis to place systems in the ''at risk'' or ''not at risk'' categories. Under today's approach, States would now review the vulnerability of their systems to identify those with an apparent risk of contamination. States would schedule these systems for increased sampling according to the degree of their vulnerability. This would relieve those systems that are not contaminated, and that have little risk of contamination, of current burdens and complexity by consolidating and reducing the standard sampling frequency for all contaminants and all classes of systems to a minimum of one sample every five years. This will reduce the State resource burden enough to allow States to focus on systems that need to sample more frequently than every five years.

EPA believes the five year sampling period is protective of public health, because the sampling will be conducted during the periods of greatest vulnerability, because the States will target those systems that are contaminated or at risk of contamination to sample at a greater frequency and because the MCLs of the contaminants affected by these changes are based on chronic health effects, which for most of the contaminants covers a seventy year period. The five year period has the advantages of coinciding with several periodic, important bases for developing data that will inform State determinations, including: (1) the five year time of travel adopted by many State Wellhead Protection Programs (WHPPs) for delineating Wellhead Protection Areas and Source Water Protection Areas, (2) many State schedules for conducting sanitary surveys at small water systems, and (3) the cycle for updating section 305(b) reports which inventory the quality of the nation's surface waters.

The chemical monitoring reform work group considered other time periods for the frequency of the default sampling period and chose five years for the reasons mentioned above. EPA seeks comment on whether the Agency should propose a shorter or longer time period and, if so, why. EPA is considering default sampling periods ranging from every three years to six years.

Shorter periods, such as three years, may appear to provide nominally more protection than the five year period, but would require more State resources to administer compliance with the shorter time frame and to respond to a higher demand for waivers than would be the case under the five year period. In most cases, these additional resources would be diverted from working on high priority water systems *i.e.*, those that are already contaminated or at risk of contamination. Thus, it is not clear that a shorter time frame would automatically result in greater protection.

Six years may appear to provide more relief than five years for systems that have little risk of contamination. That would require additional State resources to develop adequate information for the ''not at risk'' determinations because, as noted above, most State Wellhead Protection Programs are referenced to a five year time of travel.

F. Detection ≥ ½ MCL

Under § 141.23 (e) through (f) of these changes, if any contaminant were detected at a level equal to or greater than ½ of the MCL, the system would sample according to a schedule specified by the State. This trigger level was selected by considering the need to provide an adequate margin of safety in identifying potential MCL exceedances before they occur, the capability of laboratories across the country to identify contamination below the MCL, and the need to simplify the current requirements.

When contamination is detected ≥ ½ of the MCL, States would determine the level of additional monitoring required to fully characterize the contamination. This deference to State discretion, in scheduling the follow up sampling based on local circumstances, is more effective than the current provisions at detecting MCL exceedances because the sampling schedule most likely to accurately characterize contamination depends on the history of sampling results at the sampling point and neighboring points, the susceptibility of the water supply to contamination, the most vulnerable periods of contamination, and local commercial practices. Today's approach would require States to consider those factors in establishing follow up sampling schedules. Today's approach would also require systems that exceed the MCL to take at least one sample during each of the following three quarters. And, whenever the levels of contamination may vary significantly during a quarter, the sampling schedule would have to account for the expected frequency and amplitude of that variation.

Under the current monitoring requirements, any system that exceeds the trigger level must sample every quarter. There is no requirement for systems to follow up more quickly to characterize the contamination and there is no requirement for systems to sample during the periods of greatest vulnerability. Therefore, systems could mischaracterize the extent of contamination under the current requirements.

The trigger level in these changes can be explained far more easily than the trigger levels under the current monitoring requirements, because the new trigger level would always be based on the potential for exceeding the MCL. This will enhance the ability of States and systems to assess MCL compliance, by focusing on the risk of MCL exceedances, rather than trying to figure out which trigger level applies to which contaminant.

Under the current requirements, the trigger level for organic chemicals is detection. For VOCs the detection limit is 0.5µg/l, and for SOCs the EPA specified detection limit varies by contaminant. Thirty nine percent of the trigger levels for all organic chemicals are less than 1% of the MCL and fifty three percent of them are less than 5% of the MCL. Because all sampling under today's approach would be scheduled during the periods of greatest vulnerability, the sampling results would reflect the worst case level of contamination. Additionally, all detections must be reported to States under today's approach. While it is true that detection indicates a path of contamination, most water supplies are not subject to dramatic fluctuations in contamination levels and such low level detections rarely signal imminent exceedance of the MCL, at least in monitoring samples taken during the time of greatest vulnerability. Therefore, setting the trigger level at ½MCL would be protective of public health, and would minimize the chances of

undetected MCL exceedances during other times of the year.

Under the current requirements for inorganic chemicals (IOCs), systems do not have to begin quarterly sampling until the contaminant exceeds the MCL. This approach would be protective for naturally occurring contaminants, because the natural levels of fluctuation are usually slight and slow to change. However, when these chemicals contaminate water supplies as a result of human activity, the levels of fluctuation and time periods involved tend to mimic those of organic chemicals. Since virtually all of the IOCs can occur as a result of human activity, it would be more protective to establish a trigger level below the MCL for these contaminants.

In summary, it is EPA's view that the trigger level in these changes would: (1) establish a uniform, understandable and practical criterion for increased sampling that is protective of public health; and (2) strike a reasonable balance between responding to contamination at very low levels, and taking no action until a contaminant has exceeded the MCL.

EPA is, however, seeking comment on alternatives for proposing the trigger levels, recognizing that there is no perfect level for any one contaminant under all circumstances. Three of the possible alternatives are: (1) ½ of the MCL or the practical quantitation level (PQL),[24] whichever is higher; (2) detection of the contaminant; and (3) requiring use of the most sensitive methods.

(1) Trigger=½MCL or the PQL, Whichever Is Higher

This option would have the benefit of not requiring State action until the PQL has been exceeded. This means there would be a reasonable degree of certainty that a quantifiable level of contamination has actually occurred before the State would undertake its review to establish a sampling frequency based on the specifics of the contamination. For twenty five contaminants,[25] however, the PQL equals the MCL. Therefore, this option has the potential problem of inadequately characterizing, and failing to responding to, contamination until it has exceeded the MCL.

(2) Trigger=Detection

This option would offer the benefit of providing earlier warning of contamination than the options at higher levels. However, a trigger lower than ½ of the MCL may not provide a real benefit in identifying potential MCL exceedances, because contaminant levels generally take many months to change significantly. Because the time of greatest vulnerability generally indicates the maximum level of contamination, this option would have the drawback of triggering many State reviews where MCL exceedances are unlikely, and would therefore impose a burden on States that may be unwarranted.

This option also raises the issue of defining a detection. Detection should be the lowest concentration at which a laboratory can consistently detect, and correctly identify, individual contaminants in a variety of drinking water samples. Detection is more difficult in dirty water than in clean water. Detection is also determined by other variables, including the sensitivity of the analytical method used for measurement, the sophistication and age of the laboratory testing equipment, and the training and expertise of the laboratory staff. Therefore, detection will vary by laboratory and by system. EPA has not established SOC detection criteria for laboratory certification. That issue is being addressed under the new laboratory performance requirements described below in section III.J.

(3) Require Analytical Methods With the Most Sensitive Detection Levels

Under this option, laboratories would be required to use the most sensitive analytical laboratory method for each contaminant. This may offer some assurance of early detection of low level contamination. However, many labs would be required to purchase new equipment to run these methods. This would raise the cost of the drinking water program for all systems, and could create a lab capacity problem, if many labs are unable to secure the necessary funding i.e., there would be fewer certified laboratories (and possibly an inadequate number) to conduct compliance analyses. As more contaminants become regulated, more new equipment would have to be purchased. That would further raise the cost of the program, and could make the lab capacity problem worse. Finally, due to the variability of laboratory expertise, some laboratories using the most sensitive methods may operate at higher (less sensitive) detection levels than are routinely achieved by other laboratories with more skillful personnel, who are using ostensibly less sensitive analytical methods.

G. MCL Violation Determinations

Under § 141.23(g) of these changes, all MCL violations would be determined by the average annual concentration of the contaminant. This is very similar to the current provisions for determining violations when the system has been sampling at a quarterly frequency i.e., MCL violations are based on the running annual average of the prior year's sampling results. Under today's approach, all MCL violations would be determined by the average of four consecutive quarterly values, beginning with the quarter in which the initial MCL exceedance occurs.[26] The States would schedule the sampling in each subsequent quarter to include the periods of greatest vulnerability during that quarter. Each quarterly value would be determined by the time balanced average of all samples taken in that quarter i.e., the State would divide each quarter into equal segments, and use the average of the sampling results from each segment to calculate the quarterly value. By limiting the annual calculation to four quarterly values, we would avoid skewing the annual average to the periods of highest sampling frequency.

For example, a State might divide a quarter into one month segments. The State might then schedule only one sample during each of the two months considered low vulnerability segments, and ten samples (three days apart) during the month it considers to be the high vulnerability segment. The ten samples from the high vulnerability month would be averaged to provide a single data point for that segment. The quarterly value would be the average of the three monthly data points. The State may require only one sample during those quarters in which the contaminant concentration is not expected to vary significantly.

This process of segmentation would accomplish three objectives. (1) It would yield an annual value representative of the average annual contaminant concentration that includes

[24] The PQL is the lowest concentration at which a contaminant can be reliably measured.

[25] Antimony, Thallium, Alachlor, Benzo[a]Pyrene, Chlordane, Dibromochloropropane, Di(2-ethylhexyl)phthalate, Ethylene-dibromide, Heptachlor, Heptachlor Epoxide, Hexachlorobenzene, Lindane, Polychlorinated Biphenyls, Pentachlorophenol, Toxaphene, Dioxin, Benzene, Carbon Tetrachloride, 1,2-Dichloroethane, Dichloromethane, 1,2-Dichloropropane, Tetrachloroethylene, 1,1,2-Trichloroethane, Trichloroethylene, Vinyl Chloride.

[26] Sometimes, the MCL exceedance may occur at the end of a quarter, and therefore, may not be representative of a time balanced average of multiple samples taken throughout the quarter. In this case, the State should choose to begin calculating the annual average concentration in the quarter following the quarter in which the initial MCL exceedance occurred, so that the MCL compliance determination is based on four consecutive quarterly values that are representative of each quarter.

representation from the periods of highest concentration. (2) As mentioned above, it would avoid unduly skewing the annual average to the sampling results showing the highest concentrations. (3) It would prevent systems from using periods of low concentration to load up on the sampling results that would cast a downward bias onto the annual average.

If the average of one or more quarters would cause the average annual concentration to exceed the MCL, the system would be in violation of the MCL from the end of that quarter. This assures that compliance determinations would be made as soon as the average annual contaminant levels can be established as > MCL, but not until then.

EPA also seeks comment on whether systems failing to comply with a State schedule to characterize contamination after an MCL exceedance should be required to notify the public of a potential MCL violation. Specifically, EPA is considering a provision that would require any system that has exceeded the MCL, and subsequently failed to comply with a State schedule to fully characterize the average annual contamination levels, to issue a public notice under § 141.32 within 30 days of its failure to comply with the State sampling schedule.

This notice would include the health effects language under § 141.32 for the contaminant exceeding the MCL, and would further state (a) that the MCL has been exceeded, (b) that an MCL violation is based on the average annual level of contamination, (c) that the sampling schedule to effectively characterize the average annual level of contamination is based on local circumstances of contaminant fluctuation, and (d) that the system has failed to comply with the State sampling schedule to determine whether the system is in violation of the MCL. Failure to issue a public notice in accordance with these requirements would be a violation of the Safe Drinking Water Act.

H. Laboratory Certification Criteria

The quality control provisions associated with measuring the chemicals covered by these changes, the approved analytical methods for measuring compliance with the MCL, and the Performance Evaluation (PE) acceptance limits for those contaminants, would be consolidated in EPA Technical Criteria Document for the Analysis of Selected Chemical Contaminants in Drinking Water (i.e. the EPA Technical Criteria Document) incorporated by reference under § 141.23(j). A copy of this document is attached to this discussion as Appendix A, so the reader may review its provisions in conjunction with the other provisions of this document. This subsection would specify that all samples must be analyzed by laboratories certified by EPA or by the State, and that the State or EPA may suspend or revoke a laboratory's certification for failure to achieve the prescribed operating requirements and standards. This provision would supersede § 141.28 for lab certification under § 141.23.

The incorporation by reference of the EPA Technical Criteria Document into the Federal Regulations means that the requirements in the technical document would be part of the regulations and would be fully enforceable. The reason for moving the laboratory provisions into a separate document is that the audience for these requirements is different than the audience for the general program monitoring requirements. State program managers, their staff and EPA Regional Office program coordinators are interested in the program requirements described in these draft changes. The State laboratory certification officers, State lab directors, EPA Regional Office laboratory certification officers and private lab personnel are mainly interested in the highly technical requirements pertaining to laboratory measurement of chemicals. A technical manual is a much better format for system technicians and laboratory analysts who need an operational reference document.

With the exception of four changes described below, and highlighted in the text of the criteria document (Appendix A), the laboratory requirements in this document are the same as the current laboratory requirements (see 40 CFR Sections 141.23–24). Since those provisions have already undergone notice and comment, EPA is not opening those provisions for further public comment today. EPA is describing the current requirements in this preamble (1) So the reader can better understand how today's approach would fit into the total structure of laboratory requirements; and (2) because these requirements are being consolidated from several parts of the current rule into the technical criteria document identified above.

In a concurrent effort to the development of today's approach, EPA has been reviewing several inexpensive methods for detecting and measuring drinking water contaminants. These are generally referred to as immuno-assays, or immuno-assay kits. They cost about $15 to $30 a test, which is much less than some of the methods currently approved, which can cost up to several hundred dollars. EPA requests comment on the following concepts.

(1) EPA has long required that laboratories pass performance evaluation (PE) samples within prescribed acceptance limits, but has not specified a frequency for these tests. All States require labs to pass these PE tests at least every year, and EPA believes that is an appropriate requirement. These changes would adopt the universal State requirement for laboratories to successfully analyze PE samples at a minimum of once each year as provided by EPA, the State, or other parties that have been approved by the State or EPA.

(2) Under the current requirements of EPA's methods, laboratories using a method for the first time must calculate their method detection limits (MDL) for each contaminant covered by that method. However, there are no parameters for the time frame over which the MDL samples must be analyzed. Therefore, EPA is considering proposing that the extraction and analysis of the MDL samples must be performed over a period of at least three days. This same procedure was adopted under the Information Collection Rule (61 FR 24354, May 14, 1996), because EPA believes that this procedure results in a more realistic MDL determination.

(3) Under the current requirements of EPA methods, laboratories must analyze a laboratory fortified blank (LFB) with each batch of samples. LFBs are quality control samples of purified water with known concentrations of certain contaminants (i.e., the regulated contaminants affected by these changes) that are subjected to laboratory analysis, as a check on the reliability of the results produced from real world samples of unknown contaminant concentrations. The requirements for LFBs are specified in the individual EPA methods, which labs must follow. Most EPA methods require laboratories to analyze LFBs at a concentration equal to ten times the method detection limit (MDL), ten times the estimated detection limit (EDL), or at a mid-point of the measurement calibration curve.

Under these changes, laboratories would have to analyze a subset of these LFBs at the trigger level of ½ of the MCL or less, and at the level used to calculate the laboratory MDL. A record of the results of each LFB would have to be maintained until the next State certification audit or for five years—whichever is longer, and would be available to the State upon request. States would make these records

available to EPA upon request. Generally, the analyses of LFBs at specified concentrations would not affect the regulatory burden under the current requirements, because those analyses must be performed anyway and the cost of performing an analysis at one contaminant level is usually the same as performing it at another level. However, EPA seeks comment on whether running LFBs at these levels, which may be lower than the current customary levels, would result in a significant increase in the incidence of recalibrating or fine tuning the laboratory measuring equipment and whether that would result in a significant increase in laboratory operating costs.

The record of each laboratory's operational sensitivity at the trigger level, and the level used to calculate the MDL, would serve the following objectives. One, the records would provide a means for States to assure that laboratory performance is sufficiently reliable to protect public health. Two, a statistical analysis of these records would provide the basis for States or EPA to establish uniform performance criteria at these levels.

These changes would require laboratories to analyze an LFB at ½ of the MCL or less at least once per week during any week in which drinking water compliance samples are analyzed. This provision would provide an ongoing check on the reliability of each laboratory's ability to identify contamination at the trigger level. These changes would also require laboratories to analyze at least one LFB per month at the concentration that was used to calculate the MDL, during any month in which drinking water compliance samples are analyzed. The purpose of this is to maintain an ongoing record of each laboratory's ability to detect low level contamination.

It is important to characterize what ''no detection'' means for each laboratory, because the systems that contract with each laboratory will be reporting all detections to the State. The States will be making system targeting decisions and sampling waiver determinations based in part on whether or not contamination has been detected at the sampling point. For this reason, today's approach is considering requiring laboratories, as a condition of certification, to maintain records of these analyses in the format in paragraph IV of the technical criteria document, at least until the next State certification audit report has been completed.

(4) These changes would set the trigger for polychlorinated biphenyls (PCBs) at 0.00025 mg/L (i.e., ½ of the MCL), measured as decachlorobiphenyl. However, the approved PCB screening methods in the technical criteria document that determine whether or not the trigger level has been exceeded do not measure decachlorobiphenyl. They measure Aroclors, the values for which can be converted to decachlorobiphenyl using the conversion table under paragraph III.A. of the technical criteria document. Laboratories must use one of the EPA approved screening methods in analyzing LFBs at the trigger level for PCBs.

I. New Systems and New Sources

Under § 141.23(k) of these changes, any public water system or source of water supplying a public water system that begins operation after (the publication date of the final rule), would have to demonstrate compliance with all applicable MCLs in this part within a period of time specified by the State, unless the State waives testing for certain contaminants in accordance with its approved waiver process.

J. Sample Compositing

The current requirements allow systems to combine two to five samples before they are analyzed for contamination. This feature allows systems to reduce sampling costs by half or more, depending upon the number of samples composited. However, this feature may allow contamination to go undetected, where the contamination in one sample is masked by dilution from the other samples. In an extreme case, contamination at the MCL in one sample could be invisible to the laboratory analysis, where it is masked by four clean samples and where the laboratory detection sensitivity is hovering at or just above one fifth of the MCL.

For this reason, EPA is considering whether to discontinue its use. Some States, however, have expressed an interest in continuing compositing under conditions that would assure the same levels of detection sensitivity as those available for single sample analyses. EPA is open to suggestions to allow sample compositing in the limited cases where the criteria for single sample analysis would not be sacrificed.

Commenters wishing to allow systems to use sample compositing under Chemical Monitoring Reform should identify which contaminants would be covered, the single sample detection criterion the State would establish for each contaminant, and explain how the detection criteria would be enforced for both single sample analyses and composited sample analyses. The single sample detection criterion should be sufficiently far below the trigger level of ½ of the MCL as to assure that quantitation at ½ of the MCL will be within reasonable precision.

That requirement will probably eliminate many contaminants as candidates for compositing, because the composite sample detection criteria must be consistent with the single sample criterion i.e., if the State sets the single sample detection criterion at one tenth of the MCL (five times lower than the quantitation at ½ of the MCL), the detection criterion for a composite of two samples would be one twentieth the MCL (i.e., ½ the single sample detection criterion) and it would be one fortieth of the MCL for a composite of four samples, etc.

K. Records Kept by States

40 CFR 142.14(d) (4) through (5) requires States to keep records of vulnerability and monitoring decisions. This document clarifies these provisions by describing examples of the most recent vulnerability decisions and monitoring frequency decisions. Under § 142.15(d)(4), the most recent State decisions include those related to targeting systems for increased sampling and those involving sampling points that have exceeded the trigger level. Under § 142.15(d)(5), records of the most recent monitoring frequency decisions include those based on the targeting and vulnerability determinations identified above. Included in the records would be the data that States used in making these decisions.

L. Special State Primacy Requirements

Under Section 1413(c) of the Safe Drinking Water Act, as amended, a State that has primary enforcement authority for all drinking water regulations, would have interim primacy for Chemical Monitoring Reform beginning on the date the State submits its regulations and a complete primacy application to EPA, and ending when the Administrator makes a determination of the primacy application.

State program revisions would include: (1) the State's regulations or implementing provisions under §§ 141.2 and 141.23; (2) the State Targeting Plan described below; and (3) State's certification that its program, including the targeting plan, is enforceable under State law. Once adopted, the State program must operate in accordance with §§ 141.2 and 141.23, the approved State Targeting Plan, and the provisions of § 142.16(e)(3) for scheduling sampling when contaminants are detected ≥ ½ of the MCL.

1. Implementing Provisions

The implementing provisions under Part 141 are:

§ 141.2 Definitions
§ 141.23(a) General (types of systems affected)
§ 141.23(b) Sampling Points
§ 141.23(c) Responsibility to Provide Information
§ 141.23(d) Mandatory Monitoring
§ 141.23(e) Detection ≥ ½ of the MCL
§ 141.23(f) Detection > MCL
§ 141.23(g) Violation Determinations
§ 141.23(h) Laboratory Certification Criteria
§ 141.23(i) New Systems & New Sources

Under § 141.23 (e) through (f) of these changes, whenever a system detects a contaminant at a concentration equal to or greater than the draft trigger level of ½ of the MCL, the system would be required to sample at an increased frequency as directed by the State. If a contaminant exceeds the MCL, the system must take at least one sample per quarter for the following three quarters, in addition to any additional samples required by the State to assure that the average annual level of contamination is fully characterized. State decisions must be documented in writing.

States would be required under § 142.16(e)(3) of these changes to include specific factors in their review of these detections, including: (i) The history of sampling results for the sampling point and for neighboring sampling points; (ii) The susceptibility of the water supply to contamination; (iii) The periods most vulnerable to contamination for the sampling point; (iv) The contaminant's solubility and other characteristics; and (v) The agricultural and commercial practices, and the efficacy of any source water protection measures that have been enacted, within the source water review area. Further, States would have to account for the estimated frequency and amplitude of contaminant fluctuation in each sampling schedule.

2. State Targeting Plans

Under today's approach, States would identify those systems that need to sample more frequently than every five years based on local vulnerability, and every system scheduled by the State to sample more frequently than every five years under § 141.23(d), must do so. Systems must also sample during the periods of greatest vulnerability as designated by the State. Under § 142.16(e)(2), States would be required to describe their strategy for implementing this flexibility in a State Targeting Plan.

Specifically, a State Targeting Plan would describe the State's plans to screen all systems to identify vulnerable systems and the sampling points that need to sample more frequently than once every five years, for determining the frequency of sampling based on the degree of vulnerability, and for updating the State's list of targeted sampling points based on changing information. The targeting plan would also describe the factors the State would consider in determining the periods of greatest vulnerability and for scheduling the time of year and frequency at which each system must sample.

A State targeting plan would also indicate that the State may require a system to sample more frequently than every five years, at a minimum, based on any one or a combination of the following factors: (1) the fate and transport of a contaminant; (2) any agricultural, commercial or industrial activity in the source water review area; (3) the susceptibility of the source water to contamination; or (4) the results of source water assessments conducted under section 1453 of the Safe Drinking Water Act. States may list additional factors upon which they would require a system to sample more frequently than every five years, and States may subsequently require systems to sample more frequently than every five years based on a factor not listed in its targeting plan.

Finally, each State would provide the EPA Regional Administrator with its initial list, or categorical description, of systems that it has targeted to sample more frequently than every five years, within one year after it has submitted a complete primacy revision application to EPA. States would be required to update this list annually, and to make it available to the public upon request. EPA seeks comment on whether one year (which is in addition to the time prior to the submission of the State's primacy revision application) is sufficient time for the screening decisions, or whether a different period is appropriate for States to inform all of their systems of their individual sampling schedules. EPA also seeks comment on whether to require systems to continue sampling in accordance with their current schedules until the State has informed them of its screening and monitoring decisions.

EPA is considering another option to the version described above. The second version includes the approach above, and would also require States to specifically target systems served by surface water, or by ground water under the direct influence of surface water, to sample more frequently than every five years, unless (or until) the State determines that increased sampling is not required based on the degree of an individual system's vulnerability to contamination (e.g., the contaminant is not used in the source water review area), or based on a finding that the risk posed by such levels of contamination is not significant. This provision would establish a presumption of vulnerability for surface water systems, and for ground water systems under the direct influence of surface water, because of their inherent susceptibility to contamination, and regardless of the presence or absence of potential contamination sources in the Watershed & Recharge Area.

EPA also seeks comment on whether the initial detection of a contaminant within the source water review area should be an alternative basis for the presumption of vulnerability. This criterion would apply to any detection from the most recent round of sampling that has not been discarded as a false detection in accordance with State sampling confirmation procedures. The presumption would not apply to detections for which the sources of contamination have been identified, and the health risk posed by the contamination has been described, to the satisfaction of the State.

3. State Certification

The requirement for States to certify that their program revisions are fully enforceable under State law is not new, but the significance of the certification under these changes would be greater than usual. In reviewing State primacy programs and certifications, EPA would give special attention to the State's authority to impose and enforce requirements for individual systems to sample more frequently than every five years, and to sample during the periods of greatest vulnerability.

4. Oversight of State Decisions

There would be two avenues for EPA intervention into State chemical monitoring decisions, short of initiating primacy withdrawal. The first method is provided by section 1431(a) of the Safe Drinking Water Act, which authorizes EPA to take such actions as necessary to protect public health, whenever a contaminant may present an imminent and substantial endangerment to public health. EPA may exercise this option under the appropriate circumstances, without regard to any other provision in these draft changes. For circumstances that do not warrant a finding of imminent and substantial endangerment, EPA would rely on 40

CFR 142.18, as presented in this document.

Section 142.18 of the current regulations authorize an EPA Regional Administrator to annul State sampling waiver determinations. This section provides EPA with an alternative to primacy withdrawal, if EPA should find a pattern of State decisions that are contrary to the approved State program. In today's action, EPA is considering increasing the list of State decisions in which a Regional Administrator can intervene to include (1) the absence of State action to require increased monitoring under §§ 141.23 (c) through (g) and (2) State decisions to grant monitoring relief under section 1418 of the Safe Drinking Water Act. EPA could issue a monitoring order to: annul a State waiver; annul a State surrogate sampling point designation; annul a State monitoring relief decision made pursuant to section 1418 of the SDWA; or make a determination to increase monitoring in the absence of State action. EPA seeks comment on which of these State decisions the Regional Administrators should be authorized to annul in addition to waivers.

Neither the current provisions, nor the possible changes described above are intended to authorize regular, random or arbitrary EPA intervention on individual State monitoring decisions. They are intended to authorize an appropriate EPA response to a pattern of State decisions which conflict substantially with the bases in an approved program on which the State has agreed to make those decisions. The EPA monitoring order would be based on a failure by the State to implement its approved program, and would take effect only after public notice and comment. This provision is a safety valve that would provide for EPA action, short of primacy withdrawal, in the face of a State's abuse of its discretion.

Finally, as explained in the overview of this document, EPA expects most States to support today's approach to reform the chemical monitoring requirements. However, as shown in the table below, some provisions in the current requirements are more stringent and some are less stringent. EPA considers the current monitoring requirements, that were published on January 30, 1991 and that have been adopted by all States, to be as stringent, taken as a whole, as the provisions in this document. Therefore, EPA is considering allowing States to continue operating under the current requirements indefinitely. EPA seeks comment on allowing States to continue under the current requirements, if they prefer to do so.

M. Safe Drinking Water Act Amendments

Prior to the enactment of the Safe Drinking Water Act (SDWA) Amendments of 1996, Chemical Monitoring Reform (CMR) was envisioned as a free-standing initiative for monitoring revision and burden reduction. During the development of CMR, Section 1418(b) of the SDWA Amendments directed EPA to publish, by August 6, 1997, guidance for ''Permanent Monitoring Relief'' (PMR). This PMR would authorize States to provide ''tailored alternative monitoring requirements'' for public water systems upon completion of source water assessments in States with approved programs under Section 1453 of the SDWA Amendments. This notice describes in detail below the relationship between potential characteristics of CMR, PMR, and the source water assessment activities that are required by the SDWA Amendments.

As described below, Section 1418(b) authorizes PMR's features for monitoring flexibility to be broader in coverage than CMR was framed to be. If EPA develops two parallel programs for monitoring relief, there could be substantial potential for confusion, overlap, conflict, and unnecessary expenditure of scarce resources. EPA believes that Section 1418(b) directs EPA to frame PMR as a broad program for monitoring relief. To implement the Amendments effectively and efficiently, EPA must examine the actions it is required to take under the PMR provisions of the Amendments, and ensure that its exercise of discretion to frame CMR complements rather than complicates the implementation of PMR by States and public water systems.

Today EPA provides (1) advance notice of its intent to revise current monitoring regulations to provide for targeted, heightened monitoring for systems at risk of contamination and a new, simplified framework of reduced monitoring for systems not at risk (CMR), and (2) draft guidelines for PMR which would include additional burden reduction features. This advance notice is being provided in this form for two reasons. First, while it might have been possible to frame this entire monitoring initiative as PMR under SDWA Section 1418(b), EPA has decided to issue these proposals as two joint elements—PMR and CMR. EPA developed CMR in consultation with many members of the drinking water community over a period of nearly two and a half years, most of which pre-dated the enactment of the SDWA Amendments of 1996. Congress was aware of the CMR process when it enacted additional relief in the form of PMR. EPA believes separate approaches best meshes the expectations for CMR, and its responsibilities under the 1996 Amendments for PMR.

Second, this notice contains what EPA believes to be a reasonable and coherent alignment of the several components of a more flexible but potentially more protective monitoring regime. Under the approach in this notice, States can choose to retain their approved primacy regulations for the current monitoring framework for Phase II and Phase V chemical monitoring, and adopt (or not, if they choose) the burden reduction features of PMR (additional waiver authority, surrogate sampling, reduced nitrate sampling). Or, they can choose to adopt CMR as their new primacy regulation for monitoring—which includes CMR's basic, simplified monitoring framework and its provisions requiring targeted monitoring for systems at risk of contamination—and adopt (or not) the burden reduction features of PMR.

EPA recognizes that if a State adopts CMR before it obtains approval of its Source Water Assessment Program and source water assessments are completed for individual systems, the State would be unable to grant monitoring waivers. This feature of the strategy for integrating CMR and PMR may have the unintended consequence of discouraging States from adopting CMR and retaining Phase II and V, since Phase II and V provide for waivers. To address this, EPA is considering allowing States that proceed with adopting CMR to retain their existing approved waiver programs until the expiration of the State's timetable for completing the assessments. States would not be able to renew waivers after this date, unless it has met these statutory requirements. EPA solicits comments on this issue.

EPA further seeks comment on whether or not to apply this same approach to renewing waivers to States that choose to retain the Phase II and V rules. This would preclude States from renewing waivers for any public water system for which the State has failed to complete a source water assessment after the expiration of the State's timetable for completing all such assessments. The rationale for this approach would be that it is important for States to apply any updated information generated by the assessments to waiver decisions that would be made after the assessments are completed. Although EPA is only

seeking comment on this approach, there are at least two reasons to expect that it would not be burdensome for States or systems. First, EPA is taking steps to provide States with the maximum amount of time available under the law to begin and complete their assessment program by the most cost effective and prioritized approaches possible, using up to the full amount of the more than $120 million made available for assessments by Congress. Second, any water system with an existing waiver would already have a substantial and, in some cases, the full amount of information needed for a source water assessment, meaning these systems are among the likeliest candidates for expeditious completion of assessments.

EPA believes this array of features would in general present a reasonable, coherent and effective approach, but acknowledges that alternative arrays of these features within CMR or PMR are possible. Because alternative arrays could have significant implications for coherence, operation, and (potentially) compliance with various requirements of SDWA, EPA wants to present this notice for public comment on its substance as well as on the operational implications of this particular form in which the features of monitoring are arrayed.

The following are the various key components from which a State may choose to frame its monitoring regime. EPA is requesting comment on whether to delete or rearrange any elements of CMR or PMR. A complete presentation of EPA's proposed guidelines for PMR can be found in Section III.N, below.

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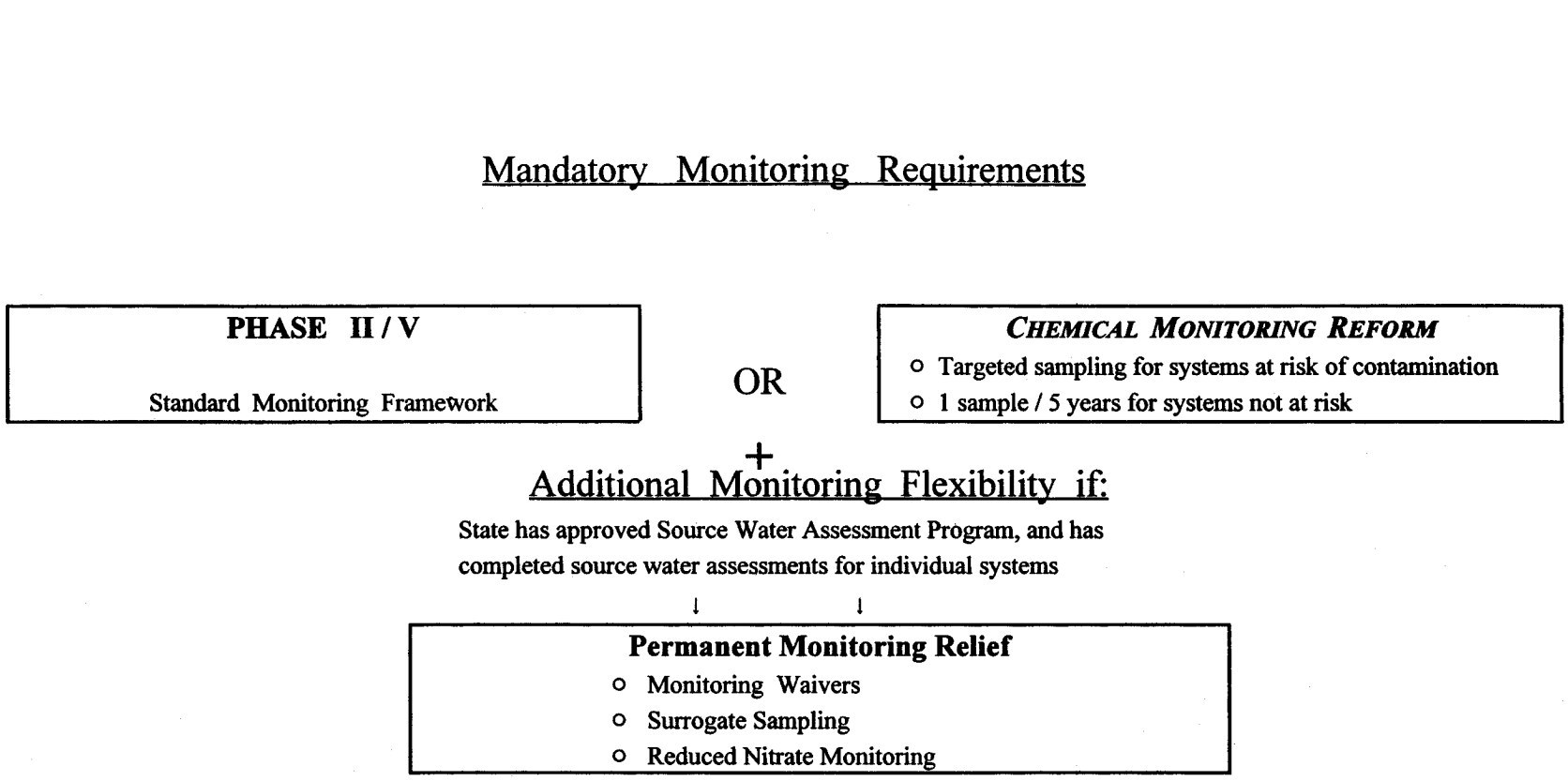

For commenters who propose transferring to a CMR rule all or part of the burden reduction features proposed today for PMR, EPA requests that their comments also discuss what similar or different burden reduction features should be included in PMR, for which EPA is required to publish guidelines, and how they believe these two frameworks for monitoring should be coordinated, operationally and structurally. In light of Congress' enactment of Section 1418(b), if EPA is to place any of PMR's burden reduction features within CMR, specific benefits and functions that could only be achieved within CMR should be identified.

Comments proposing modifications to the monitoring requirements under CMR for systems with little to no risk of contamination (one test in five years) should address the expected public health implications of the proposed modifications.

EPA also requests comments on the basis for the monitoring requirements for systems at risk of contamination: the Phase II and Phase V requirements currently in place; the targeted approach for specifying heightened monitoring proposed as a part of CMR today; or some other approach, such as a range of monitoring frequencies EPA could specify to apply to different categories of contaminant, source water or water system conditions that would trigger increased monitoring. It is necessary to consider these requirements when commenting on PMR because Section 1418(b)(3) specifies that public water systems that are monitoring under PMR provisions and that detect contaminants at levels that are not ''reliably or consistently below'' the MCL and that do not ''eliminate the contamination problem'' must return to the monitoring frequencies specified in the applicable NPDWR (Section 1418(b)(3)(B)). Currently, the monitoring frequencies under the applicable NPDWR are those specified under the existing Standard Monitoring Framework for Phase II and Phase V contaminants, which requires quarterly monitoring for these systems. The monitoring frequencies under CMR would be the heightened monitoring requirements for systems at risk of contamination.

EPA cannot consider comments proposing the actual or effective deletion of PMR, because it is required under Section 1418(b) to publish guidelines for PMR.

Greater economic efficiency is an important value of the SDWA Amendments of 1996 because it can enable the limited funds of public water systems and States to be focused on the greatest risks to health. Nonetheless, protection of public health itself remains the dominant consideration under the SDWA. In monitoring as elsewhere in implementation of the SDWA Amendments, EPA has a statutory obligation to see that structures and decisions in PMR and CMR equally are based on the adequate scientific information necessary to ensure that public health is protected. To strengthen public confidence in drinking water safety, consumers must know that a decision to reduce monitoring of their water supplies is well-grounded in adequate scientific data and analysis of their water system, that any waiver of monitoring is based on a scientific judgement that the contaminant will not be present at problematic levels during the waiver period, and that any detection at problematic levels of a contaminant subject to reduced monitoring will quickly lead to appropriately heightened monitoring. The following discussion identifies the means to provide such scientific information.

In Section 1418, Congress expressly provided that completion for a water system of a source water assessment, pursuant to an approved State Source Water Assessment Program (SWAP) under Section 1453, was a prerequisite to granting PMR to that system. Section 1453 requires States to establish and implement SWAPs. To do this work, Section 1452(k)(1)(C) makes available to States, and allows them to obligate over 4 fiscal years, up to 10 percent of the funds allotted to them for State Revolving Funds in Fiscal Year 1997, a total of over $120 million nationally. EPA is committed in Headquarters and in the Regions to ensure successful assessments, and will as needed assist States on the Drinking Water SRF set-asides, on stretching assessment dollars by strong involvement of all capable participants in the assessments, and by encouraging exchange of information about good models for assessments and use of existing information to place within the assessments. EPA believes that this funding and support will yield useful assessments that can enable PMR to be provided where appropriate, and will place source water protection on a firm base.

The Safe Drinking Water Act Amendments of 1996 also require EPA to publish guidance for these two efforts—Source Water Assessments and Permanent Monitoring Relief—at the same time, one year after enactment (that is, on August 6, 1997). This timing ensures that, as States began to develop their SWAPs under Section 1453 guidance, they will know what information is needed to provide their systems with Permanent Monitoring Relief, and can frame their assessment programs to generate (among other things) the data necessary for PMR. EPA's draft Source Water Assessment guidance of April 4, 1997, proposed that existing delineations and source inventories done under approved State Wellhead Protection Programs would be adequate to fulfill the delineation and inventory requirements of Section 1453 for those ground water based systems. However, States should examine whether these delineations and inventories provide sufficient information to support all aspects of PMR, and should consider modifying them under their SWAPs where necessary to take full advantage of the regulatory flexibilities offered in PMR.

Under CMR, the basic monitoring frequency in the proposed rule, of 1 sample every 5 years, is to be founded on the determination that the system is not at risk. In deciding what information is necessary to make determinations under CMR, today's proposal relies on a level of information rather than the process to generate that information (that is, the source water assessment process) specified for PMR under Section 1418(b).

The kinds of data on source water, occurrence, susceptibility, use, and the like that would be generated by a source water assessment appear necessary to make adequately informed determinations for all functions of CMR: on which systems are or are not at risk, to develop a targeting plan for at-risk systems, and to specify sampling times of greatest vulnerability for systems that are not. States are not required to undertake a formal source water assessment process to generate such data for CMR, but they are required to have and apply the level of data that would be generated by an assessment to make CMR determinations. This level of data will be consistent with the criteria for completion of assessments each State has defined in their EPA-approved assessment program, and likely will vary depending on the nature and condition of a system (i.e., community or non-community, at risk or not at risk, etc.). In other words, States can apply a screen that is essentially equivalent to a source water assessment to ensure they have adequate scientific data to make CMR determinations, but they need not complete a formal assessment to do so. EPA may also include in its final source water assessment guidance (to be published no later than August 6, 1997) a provision in which States can use this ''assessment equivalence'' concept to allow the use of information generated

by States for Chemical Monitoring Reform to be used to complete source water assessments, at a level appropriate to the situation of the water system.

This data requirement (§ 142.16(e)(2)(i)(A) of these changes) should not slow CMR implementation. Many States have already gathered considerable data on contamination sources, performed vulnerability assessments, and analyzed monitoring data on these contaminants in implementing the Phase II and V rules and in developing approved waiver programs under those rules. Many States have also performed similar work in developing wellhead protection programs. States are also required to submit to EPA their source water assessment programs by February, 1999. Because EPA does not expect to promulgate final CMR regulations before August, 1998, States can thus incorporate the characteristics of completed ''assessment equivalents''—waiver programs, monitoring results, and wellhead protection programs—into their overall CMR plan, for targeting at-risk systems and providing the simplified monitoring framework for systems not at risk. States can put their overall CMR plan into effect when EPA approves their primacy regulations for CMR. They can determine which systems are or are not at risk where they have this ''assessment equivalence'' level of information.

N. Permanent Monitoring Relief Guidelines

Introduction

The Permanent Monitoring Relief provision of the Safe Drinking Water Act (the Act) authorizes primacy States to adopt ''tailored alternative monitoring requirements'' for most chemical contaminants. Under that provision, State monitoring relief must comply with guidance published by EPA, as well as ''assure compliance with, and enforcement of, the applicable national primary drinking water regulations.''

Congress directed EPA to publish guidelines ''for States to follow in proposing alternative monitoring requirements.'' These guidelines must (1) assure that ''public health will be protected from drinking water contamination,'' (2) require States to apply this monitoring relief ''on a contaminant-by-contaminant basis,'' and (3) require that, to be eligible for monitoring relief, a system must show that the contaminant is not present in the water supply, or, if present, is reliably and consistently below the MCL, or that ''action has been taken to eliminate the contamination problem.''

Congress also specified that each State must develop, and secure EPA approval of, a Source Water Assessment Program under section 1453 of the Act, and that a source water assessment must be complete for any system to which such alternative monitoring requirements would be available.[27] The guidance for approvable State Source Water Assessment Programs must be published by August, 6, 1997.

Overview

States may offer Permanent Monitoring Relief for the sixty four (64) contaminants listed in Table I, below, and for nitrate. Permanent Monitoring Relief is not available for microbial contaminants, for indicators thereof, or for contaminants formed within a distribution system as a result of disinfection or corrosion.

TABLE I.—CONTAMINANTS AFFECTED BY CHEMICAL MONITORING REFORM

Inorganic Chemicals (IOCs):
[1] Antimony, [2] Arsenic, [3] Asbestos, [4] Barium, [5] Beryllium, [6] Cadmium, [7] Chromium, [8] Cyanide, [9] Fluoride, [10] Mercury, [11] Nickel, [12] Selenium, [13] Thallium.

Synthetic Organic Chemicals (SOCs):
[1] 2,4-D (Formula 40 Weeder 64); [2] 2,3,7,8-TCDD (Dioxin); [3] 2,4,5-TP (Silvex); [4] Alachlor (Lasso); [5] Atrazine; [6] Benzo[a]pyrene; [7] Carbofuran; [8] Chlordane; [9] Dalapon; [10] Di(2-ethylhexyl)adipate; [11] Di(2-ethylhexyl)phthalate; [12] Dibromochloropropane (DBCP); [13] Dinoseb; [14] Diquat; [15] Endothall; [16] Endrin; [17] Ethylene dibromide (EDB); [18] Glyphosate; [19] Heptachlor epoxide; [20] Heptachlor; [21] Hexachloro-cyclopentadiene; [22] Hexachlorobenzene; [23] Lindane; [24] Methoxychlor; [25] Oxamyl (Vydate); [26] Pentachlorophenol; [27] Picloram; [28] Polychlorinated Biphenyls (PCBs); [29] Simazine; [30] Toxaphene.

Volatile Organic Chemicals (VOCs):
[1] 1,1-Dichloroethylene; [2] 1,1,2-Trichloroethane; [3] 1,1,1-Trichloroethane; [4] 1,2,4-Trichlorobenzene; [5] 1,2-Dichloropropane; [6] 1,2-Dichloroethane; [7] Benzene; [8] Carbon tetrachloride; [9] cis-1,2-Dichloroethylene; [10] Dichloromethane; [11] Ethylbenzene; [12] Monochlorobenzene; [13] o-Dichlorobenzene; [14] p-Dichlorobenzene; [15] Styrene; [16] Tetrachloroethylene; [17] Toluene; [18] trans-1,2-Dichloroethylene; [19] Trichloroethylene; [20] Vinyl Chloride; [21] Xylenes.

For contaminants identified in Table I, States could, under PMR, grant waivers to permit systems to forgo the sampling requirements of one sample every five years, and can allow systems to conduct surrogate sampling from sampling points within a system, or among two or more systems, in lieu of sampling at every entry point to the distribution system. These waiver and surrogate sampling provisions are presented in greater detail in Sections A and B, respectively. For nitrate, States could permit systems to reduce the sampling frequency from annual to biennial under certain conditions. These provisions are described in Section C. Section D explains the process for State adoption and EPA approval of Permanent Monitoring Relief and Section E provides definitions of key terms used in these guidelines.

Section A—Sampling Waivers for Chronic Contaminants

Under the Chemical Monitoring Reform approach, water systems would sample at a minimum of once every five years during the time of greatest vulnerability for each of the sixty four contaminants listed in Table I, above. Under the PMR guidelines, a State could allow a system to forgo monitoring at specified sampling points during a monitoring period by granting a sampling waiver.

EPA seeks comment from States and systems on whether the relief provided by five year waivers would be meaningful, in light of the cost difference between sampling once every five years or updating a vulnerability analysis to review a waiver every five years, understanding that waivers could be granted on an area wide basis, and do not have to be done on an individual system basis.

(1) *State Findings Required for Waivers:* Under PMR, a State could grant a waiver allowing a system to forgo sampling during a five year

[27] See sections 1418(b) and 1453(a)(3)

monitoring period, if the State, at a minimum, makes one of the following determinations.

(a) The State may determine that the sampling point is free of contamination and there is a high probability that it will remain so during the term of the waiver. A State may not make this determination, if the contaminant has been detected within the source water review area of the sampling point within the last five years.

(b) The State may determine that the contaminant level will remain reliably and consistently below the MCL during the sampling period based on a finding that:

(i) the natural occurrence levels are stable and the contaminant does not occur because of human activity; or

(ii) all the sources of potential contamination within the source water review area: have been identified, brought under control, and will pose no increased or additional risk of contamination to the source water withdrawal point during the sampling period; and the contaminant levels have peaked based on the history of sampling results and the duration of the contaminant in the environment; or

(iii) the treatment at the sampling point is properly operated and maintained, and is working reliably and effectively.

(c) A State may not make any of the three determinations under this paragraph, if the contaminant was detected at a level ≥ ½ of the MCL in the most recent sampling series for that sampling point.

(2) *General Considerations:* In making waiver decisions the State shall, at a minimum, consider the following factors.

(a) the fate and transport of the contaminant;

(b) the patterns of contaminant use;

(c) the location of potential contamination sources within the source water review area;

(d) the hydrogeologic features within the source water review area;

(e) the integrity of the structures delivering source water to the sampling point;

(f) the results of all source water assessments that have been completed within the source water review area;

(g) the efficacy of any source water protection measures that have been enacted, and;

(h) for waivers based on the contaminant remaining reliably and consistently below the MCL for the sampling period, the relationship of the sampling results to the MCL, the variability of the sampling results over time, and the trend of the sampling results.

(3) *System Responsibility:* Each water system granted a sampling waiver under this paragraph shall notify the State within 30 days of the time it first learns of any change in any of the conditions under which a waiver was granted.

(4) *State Review of Waiver Determinations:* The State shall review its decision to grant or renew a waiver, whenever it learns of a change in the circumstances upon which the waiver was granted. The State may amend the terms of a waiver, or revoke a waiver at any time.

(5) *Waiver Renewals:* A State may renew a sampling waiver by making the same determination it made to initially grant the waiver, after reviewing current assessments of the factors that are subject to change during the term of the waiver, and that affect the finding(s) upon which the waiver is based.

(6) *Waivers for Cyanide:* Before granting a waiver for cyanide, the State shall determine whether cyanide is present in the system's source water.

Section B—Surrogate Sampling Points

A State may allow a system, or several systems, to use the monitoring results from the sampling point(s) designated by the State as surrogate point(s), if the State determines that the source water serving the surrogate sampling points is drawn from the most vulnerable portion of the same contiguous source water.

(1) *Intra-system Surrogate Sampling:* For designating surrogate sampling points within one system, the State shall consider a sufficient record of the pertinent information below and the results of the source water assessments that have been completed under section 1453 of the Safe Drinking Water Act

(a) Monitoring data demonstrating that the sampling results are < ½ MCL;

(b) Well log or surface water hydrology data demonstrating that the points to be included in the surrogate sampling point program draw from the same contiguous source water; and

(c) An inventory of the potential contamination sources within the source water review area affecting all the sampling points to be included in the surrogate sampling point program.

The State shall also require the system to validate the results of the surrogate sampling points. For example, where one sampling point among three in a small system has been designated as the surrogate point, the State might require the other two points to rotate the sample every five years. This would reduce the system sampling burden by one third.

(2) *Inter-system Surrogate Sampling:* For designating surrogate sampling points among systems, a State must first receive EPA approval of its criteria and procedures for implementing an Inter-system Surrogate Sampling Point Program, that meets the criteria of this paragraph. Two or more systems may use the monitoring results from surrogate sampling points designated by the State, based on a complete assessment of the contiguous source water that has been approved by the State and that describes:

(a) The requirements for validation sampling (For example, where several sampling points among dozens in several systems have been designated as the surrogate points, the State might require the next most vulnerable tier of sampling points to ''round robin'' the sample every five years. This could significantly reduce the overall sampling burden.);

(b) The location of potential contamination sources that could affect any of the Community Water Systems or Non-transient, Non-community Water Systems drawing from the contiguous source water.

(c) The hydrogeologic features of the contiguous source water; and

(d) The relationships among potential contamination sources, the hydrogeologic features and the source water withdrawal points, with particular regard to their relative locations.

(3) *Validation Sampling:* Whenever the sampling results at a surrogate point are ≤ ½ of the MCL, the State shall require the systems to conduct validation sampling at each of the points represented by that surrogate point. Surrogate sampling shall be discontinued for that sampling point, and for any sampling points that it represents, if the contaminant is ≤ ½ MCL. The State shall then decide which sampling points to target for increased sampling, which, if any, to default to once every five years, and which, if any, may be appropriate for a smaller surrogate sampling arrangement.

(4) *System Responsibility:* Each system shall notify the State within 30 days of the time it first learns of any change in any of the conditions under which any surrogate sampling point has been designated.

(5) *State Review of Surrogate Sampling Point Designations:* The State shall review its decision to designate any surrogate sampling point, whenever it learns of a change in the circumstances upon which the point was designated.

EPA seeks comment on its distinction between intra-system surrogate sampling and inter-system surrogate sampling, and the requirements

associated with each. EPA made the distinction because it believes that inter-system surrogate sampling is likely to be more complex and require more sophisticated analyses that intra-system surrogate sampling. There may be situations, however, where inter-system surrogate sampling is simple or where intra-system surrogate sampling is complex. EPA seeks comment on whether the distinction should be made on the complexity of analyses as opposed to the intra-system and inter-systems distinction. Commenters should provide specific suggestions for making an alternative distinction.

Section C—Reduced Nitrate Sampling

States may reduce the nitrate monitoring frequency from annual to biennial sampling for a sampling point served exclusively by ground water under the following conditions:

(1) *Maximum Allowed Concentration:* Nitrate measured as N has not exceeded a concentration equal to or greater than 2 milligrams per liter at any time during the past ten years;

(2) *Integrity of Structures and Equipment:* The State has determined that the design and construction of the structures and equipment delivering water from the wellhead to the distribution system fully comply with current State code for such structures and equipment;

(3) *Freedom from Surface Water Intrusion:* The State has determined that the ground water serving the sampling point is not under the direct influence of surface water, and is not susceptible to significant changes in contamination levels during the period for which the sampling would be reduced e.g., not a shallow well, not in fractured bedrock;

(4) *State Determination:* The State has determined that (a) nitrate sampling is not required as a precursor to microbial or viral contamination, (b) land uses, or relevant land use based conditions (such as the effective operation of septic systems) in the area affecting the sampling point are unlikely to change in a way that would increase the risk of nitrate contamination, and (c) any contamination at the sampling point is very unlikely to exceed the 2 mg/l during the reduced sampling period;

(5) *Effect of Detection ≥ 2 mg/l:* If nitrate is detected at ≥ 2 mg/l, measured as N, the system shall return to an annual sampling frequency under the State requirements adopted pursuant to the national primary drinking water regulations; and

(6) *System Responsibility and State Review:* Each system shall notify the State within 30 days of the time it learns of any change the conditions under which the reduced sampling for nitrate has been allowed, particularly of any change in land use practices. The State shall review its decision to reduce the sampling frequency, whenever it learns of a change in the circumstances upon which its decision was based.

EPA also seeks comment on [a] whether the Agency should use a threshold other than 2 mg/l as one of the bases for reduced monitoring, [b] whether EPA should set a reduced frequency other than biennial sampling, or [c] whether EPA should establish a sliding scale of longer sampling frequencies e.g., three year frequency based on a threshold of 2 mg/l, and five year frequency based on a threshold of 1 mg/l.

Section D—State Adoption and EPA Approval of Permanent Monitoring Relief

The Act specifies that State Permanent Monitoring Relief provisions will be treated as ''applicable'' national primary drinking water regulations, which means they must be enforceable under both State and Federal law.[28] The Act defines an enforceable State requirement as a ''State program approved pursuant to this part.'' [29] In order to assure that the State Permanent Monitoring Relief provisions will be Federally enforceable, EPA must review and approve the State program. Therefore, any State adoption of alternative monitoring requirements to offer Permanent Monitoring Relief must be at least as stringent as these requirements and adhere to each of the following steps.

(1) *State Program Description:* The State shall describe the information it will review, and its procedures and decision criteria for issuing waivers under Section A, designating surrogate sampling points under Section B, or allowing systems to sample biennially for nitrate under Section C. At a minimum, the State Program Description shall include the criteria under Sections A–C (respectively) for each form of monitoring relief that the State proposes to offer, and specify that the State will retain a record of the most recent vulnerability determination for each sampling point, including:

(a) Those resulting in a decision to grant a sampling waiver under Section A;

(b) Those resulting in a decision to allow the use of intra-system surrogate sampling points under Section B(1); and

(c) Those resulting in the approval of source water assessments and the location of geographically targeted sampling points based on those source water assessments under Section B(2).

(2) *Notice and Comment:* The State must provide notice and opportunity for public comment on the requirements.

(3) *Attorney General Certification:* The Attorney General must certify in writing that the alternative State monitoring requirements were duly adopted under State law, are enforceable under State law, and comply with EPA's Permanent Monitoring Relief Guidelines and with §§ 1418 (b) through (c) of the Safe Drinking Water Act, as amended August 6, 1996.

(4) *State Source Water Assessment Program:* EPA must have approved the State's Source Water Assessment Program.

(5) *EPA Review and Decision:* Unless EPA notifies the State of its disapproval of the State requirements within 9 months of EPA's receipt of a complete set of the proposed State requirements, the State requirements will take effect on the date of the State's submittal of a complete program, or the effective date of its regulations, whichever occurs later.

(a) A notice of disapproval will include the identification of the part(s) of the State requirements at issue and the remedies necessary to render those parts approvable.

(b) The State requirements shall not take effect until the State has corrected the problems identified by EPA, and resubmitted its revised program for review.

(6) *EPA Review of State Determinations:* A Regional Administrator may annul a State decision to grant a waiver, to designate a surrogate sampling point, or to reduce nitrate sampling, under the procedures specified in 40 CFR, Part 142.18. EPA is seeking comment on whether to expand this authority to these and other State decisions.

Section E—Definitions

(1) *Contiguous source water* means, for the purposes of these guidelines, a source or several inter-connected sources of public drinking water:

(a) Comprised of surface water, or ground water, or ground water under the direct influence of surface water, or any combination thereof, that serves two or more source water withdrawal points; and

(b) From within which contamination that can reach any one of the source water withdrawal points, can also reach any of the other source water withdrawal points.

[28] See § 1418(c)

[29] See § 1414(i)(4).

(2) *Monitoring period* means a five year period during which water systems are required under 40 CFR 141.23 to take at least one sample during the time of greatest vulnerability.

(3) *Source Water Review Area (SWRA)* means the surface and subsurface area within which a contaminant can reach the source water withdrawal point, or any point between it and the entry point to the distribution system (e.g., an aqueduct), during the time between regularly scheduled samples. The size and shape will vary depending upon several factors, including the sampling period and the hydrogeologic features within the area. Where systems use ground water, the SWRA could be the Source Water Protection Area (SWPA) established under the Safe Drinking Water Act, where the SWPA is based on a time of travel delineation consistent with the sampling period i.e., 5 years. For surface water, the SWRA is the watershed upstream of the source water withdrawal point.

(4) *Surrogate sampling points* mean the sampling point(s) within a group of sampling points: within one water system e.g., under a Wellhead Protection Program, that meets the criteria for intra-system surrogate sampling point designations; or within a group of water systems, that are designated by the State as the most vulnerable to contamination and, therefore, can be used to represent all the sampling points within the group.

(5) *Validation sampling* means sampling at one or more points represented by surrogate sampling points, in order to verify that the surrogate points are representative of those sampling points.

O. Suggestions for Regulatory Burden Reduction Other Than Chemical Monitoring Reform

As explained in the Summary of Draft Changes, as part of the President's initiative to ''Reinvent Environmental Regulation'', EPA has been reviewing the National Primary Drinking Water Regulations (NPDWRs) to find opportunities for reducing the paperwork burden on public water systems and State drinking water agencies, and has solicited input from States, water utilities, and environmental groups. That process yielded a number of suggestions, including many which have been incorporated into the Chemical Monitoring Reform approach that is presented today. ''Stakeholders'' did, however, make suggestions other than those related to Chemical Monitoring Reform. EPA believes a few of these suggestions deserve further consideration. Consequently, we are presenting those suggestions below, and are requesting comment, data, or other relevant information on each so that the Agency can more fully evaluate their merits for possible subsequent rulemaking.

It should be noted that none of the following suggestions were unanimously embraced by all stakeholders, and some received more stakeholder support than others. The suggestions follow:

(1) Surface Water Treatment Requirements

Extend various deadlines associated with filtration of ground waters under the direct influence of surface water.

Section 142.16(b)(2)(B) of the regulations require States to determine which community water systems are served by ground water under the direct influence (GWUDI) of surface waters by June 29, 1994, and which noncommunity water systems are GWUDI by June 29, 1999. Section 141.71 of the regulations then requires that, within 18 months after a system has been designated as a GWUDI, the State must determine whether the system has to install filtration treatment or is able to avoid filtration.

It has been suggested that provisions be adopted which would allow for extensions of these two requirements. Some stakeholders believed that while many GWUDI determinations are relatively easy, others are quite complex—requiring additional time to complete. Some States also have many more such determinations to make. The suggestion was to provide States with additional time to make the determinations for these more complex cases or where an extremely large number of determinations is required. It was suggested that States be allowed additional time to make the filtration determinations where they are particularly complex or there are an extremely large number of determinations to make.

In both cases, the suggestion was to allow for such extensions on a case by case basis, possibly through a formal request to EPA for an extension for specific systems. The suggestions also envisioned that the extensions would be for a finite time period (possibly 2 to 5 years), to be specified in the federal regulations.

(2) General Reporting Requirements

(a) *Eliminate the requirement for water systems to report monitoring violations to the State.* Section 141.31(b) of the current federal regulations requires public water systems to report a violation of any regulatory requirement to the State. One such requirement is that a system must notify the State any time it fails to conduct any required monitoring. In practice, States do not typically rely on water systems to inform them of such failures. A system which does not perform some required monitoring is not likely to notify the State of that failure. Rather, States normally treat failure to receive laboratory analytical results as the indicator that monitoring did not occur. As a result, it has been suggested that the federal requirement—that systems report instances of failure to monitor—is redundant, and is serving no useful purpose. The interpretation is that since there is a Federal requirement for water systems to report analytical results of all monitoring to the State, a requirement to notify the State of a failure to monitor is, in effect, redundant, and thus unnecessary.

The intended purpose behind the requirement was to ensure that States knew where required monitoring was not occurring so that they could take some type of action to correct that failure. Advocates of this approach believe that experience suggests that purpose is being served without needing the support of the federal requirement. It has been suggested, therefore, that EPA eliminate the federal requirement that water systems must report monitoring violations to the State. Systems would still be required to report analytical results of all required monitoring to the State. With the suggested change, however, States would have the option of continuing to require systems to report monitoring failures to the State (although this would now be through State, rather than federal, regulations), or treating any failure to provide the analytical results as a monitoring failure. In either case the State would know that follow-up action was necessary—fulfilling the intent of the original federal requirement. Further, a water system would still be required to notify the public of its failure to conduct the required monitoring [§ 141.32(b)]. The consumers would, therefore, be aware that some required monitoring had not occurred and could take citizen action to resolve that failure. In addition, States would still be required to follow-up on, and resolve, such failures. Finally, States would still be required to notify EPA of all water system monitoring failures. Advocates believe that EPA would, therefore, continue to have all the information that it currently has about such failures and the Federal oversight and enforcement capabilities

would not be diminished. The suggested change would, in this view, not alter a State's knowledge about a water system's failure to monitor, a State's obligation to correct that failure, a State's obligation to report the failure to EPA, the system's obligation to inform the public about the failure, or EPA authorities to take an enforcement action against the system. The change would only give a State the flexibility to decide how it wants to arrive at a determination that a system has failed to conduct some required monitoring.

(b) *Reduce the frequency of reporting violation information to EPA.* Section 142.15(a) of the current regulations requires States to submit to the Agency, quarterly reports of; (a) new violations by public water systems, (b) new enforcement actions taken by the State against public water systems, and (c) new variances and exemptions granted by the State during the previous quarter. The violations and enforcement data include acute and chronic contaminants, violations of actual safety standards (MCLs, treatment techniques, etc), and failures to sample or report according to schedule. Some of these violations represent a greater risk to public health than others and some are more time sensitive than others. As an example, violations of acute contaminants (such as e-Coli, or fecal coliforms) or violations associated with acute contaminants (such as total coliforms), typically need to be addressed sooner than do violations of chronic contaminants. As such, the regulatory agency needs to be aware of a violation of an acute contaminant sooner than it does a violation of a chronic contaminant. Similarly, violations of maximum contaminant levels (indicating actual contamination) typically require more immediate attention than do violations of monitoring requirements. Even different types of monitoring violations deserve different levels of attention. ''Major'' monitoring violations (those in which none of the required monitoring was conducted) need to be addressed and resolved much sooner than do ''minor'' monitoring violations (those in which some, but not all of the required monitoring was conducted).

There is also a distinction in the urgency for any violation information among the different users of that information. States are typically the primary enforcement authority for the drinking water requirements, with EPA serving a secondary role. The primary enforcement authority needs to make decisions about violation severity and appropriate remedy, and therefore, typically needs information more quickly than does the secondary overseer. In States where a State agency has been delegated this primary enforcement authority, EPA typically becomes involved only when a violation is considered ''significant'', or where it is clear that EPA involvement is necessary to resolve the problem. Other than these special situations, EPA's role is one of evaluating the success of the drinking water program through the surrogate of compliance/violation statistics.

For these reasons, some stakeholders questioned EPA's need for all of the above information, on a quarterly basis. It has been suggested that EPA align the frequency of State reporting to the importance of the information to the Agency. One suggestion was to continue to require quarterly reporting of violations of all maximum contaminant levels (MCLs), treatment techniques, and State enforcement actions against those violations, but to reduce to annually all other State reporting. Another suggestion was to require quarterly reporting of all information (MCL, treatment technique, reporting, etc) related to acute contaminants, but to reduce to annually the reporting of all information related to chronic contaminants.

It should be noted that a few stakeholders believed that reducing the reporting frequency would actually increase, rather than decrease, the burden on States. Some stakeholders noted the problems and obstacles faced by States in transmitting violation data to EPA (such things as identifying why certain data is rejected by the automated data system), and believed that ''saving'' resolution of all these problems until the end of the year would actually take much more time than would have been required if done on a quarterly basis.

EPA requests comment on these suggestions and solicits ideas for other ways of reducing the frequency of reports from the State to EPA.

List of Subjects in 40 CFR Parts 141 and 142

Environmental protection, Administrative practices and procedures, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply, Indians.

Dated: June 26, 1997.

Carol M. Browner,

Administrator.

Appendix A to Preamble: EPA Technical Criteria Document for the Analysis of Selected Chemicals in Drinking Water

(The four suggestions for change described in the preamble and subject to comment are highlighted in the following technical criteria document with [brackets].)

Contaminant Performance Criteria: In order to receive and retain certification for analyzing samples to determine compliance under 40 CFR 141.23 and Part 141, Subpart I, a laboratory would have to meet the following requirements.

I. *Laboratory Method Detection limits (MDLs):* Before initially using an EPA approved method to analyze compliance samples, each laboratory would calculate the MDL for each regulated contaminant covered by that method using at least seven replicates in accordance with the procedure in 40 CFR, Part 136 Appendix B, [except that the LFBs used to calculate the MDL must be extracted (if applicable), and analyzed over a period of at least three days]. The requirement to calculate the initial MDL over a three day or longer period does not apply to MDL calculations conducted before October 1, 1997.

A. Each laboratory would achieve an MDL of 0.5 µg/l for each VOC listed under § 141.61(a), an MDL of 1 µg/l for lead, and for copper—an MDL of 1 µg/l or 200 µg/l when atomic absorption direct aspiration is used.

B. Each laboratory would achieve the detection limits specified by the State for all other contaminants listed under §§ 141.11(b), 141.61(c) and 141.62(b) (1) through (6), 141.62(b) (10) through (15) and 141.82(c)(3).

II. *Ongoing Quality Control:* Each laboratory would analyze a laboratory fortified blank (LFB) with each batch of samples. The spike levels of each LFB would be as specified by the individual methods or consistent with standard laboratory practices, except that:

A. [Trigger Level LFBs—(i) Each laboratory would extract (if applicable) and analyze at least one LFB per week at a concentration equal to or less than ½ of the MCL in any week during which drinking water compliance samples are either (1) analyzed directly without the use of an extraction step; or (2) extracted for future analysis.

(ii) For polychlorinated biphenyls, the LFBs would be analyzed using an approved PCB screening method under paragraph V. of this document. The

conversion table below would be used to determine if a laboratory can detect Aroclors at ½ of the MCL.

Aroclor	Aroclor in mg/L	Conversion factor	Decachlorobiphenyl in mg/L
1016	0.00013	1.92	0.00025
1221	0.000095	2.63	0.00025
1232	0.000115	2.17	0.00025
1242	0.00013	1.92	0.00025
1248	0.00015	1.67	0.00025
1254	0.000165	1.52	0.00025
1260	0.00018	1.39	0.00025

(iii) In any week during which a laboratory is using method 508A to analyze drinking water compliance samples, it would extract and analyze at least one LFB at a concentration equal to or less than ½ MCL using that method.

B. MDL LFBs—Each laboratory would extract, if applicable, and analyze at least one LFB per month during any month in which drinking water compliance samples are either (1) analyzed directly without the use of an extraction step; or (2) extracted for future analysis. In either case, the laboratory would spike each LFB at the same level as that used to calculate the method detection limit in the initial demonstration of capability.]

C. Each laboratory would reliably achieve the accuracy and precision parameters, if any are specified by the State under paragraph A above, and the detection sensitivity, if any are specified by the State under paragraph B, in the analyses of these LFBs.

III. *Approved Analytical Methods, PE Samples and Acceptance Limits:* All samples used to determine compliance with the maximum contaminant levels under §§ 141.11(b), 141.61(a), 141.61(c) and 141.62(b) (1) through (6) and 141.62 (10) through (15) would be analyzed in accordance with the methods, preservation techniques and holding times specified under paragraph V. Approved Analytical Methods and Acceptance Limits Under Chemical Monitoring Reform, of this document and in the method descriptions.

A. [At a minimum, each laboratory must successfully analyze Performance Evaluation (PE) samples every year as provided by EPA, the State, or other parties that have been approved by the State or EPA.] This series of PE samples must be tested for the contaminants, and achieve the quantitative acceptance limits, under paragraph V. of this document

B. Each laboratory must achieve the quantitative acceptance limits under paragraph V. of this document for at least 80 percent of the regulated organics listed in § 141.61(a)(2) through (a)(21).

IV. *Recording Results of Sampling Analyses and Laboratory Quality Assurance Analyses:*

A. Each laboratory would report the results of all sample analyses, including all detections, in the manner and format specified by the State. For the purposes of 40CFR141.23 only, ''detection'' means any value observed in a drinking water sample that is equal to or greater than the MDL as determined by the procedures in 40CFR136, Appendix B, by paragraphs I and II. of this criteria document, and by criteria established by the State.

B. [Each laboratory would report the results of analyzing the Performance Evaluation (PE) Samples under paragraph III. to the State, at a minimum frequency of once each year.

C. Each laboratory would maintain a record of each MDL analysis and calculation under paragraph I, in the format specified by the State, until the next State laboratory certification audit report has been completed, or for five years, whichever period is longer.

D. Each laboratory would maintain a record of each LFB analysis conducted under paragraph II., in the format specified below, until the next State laboratory certification audit report has been completed, or for five years, whichever period is longer.

E. The records under Paragraphs C. and D. (above) would be provided to the State upon request, in the manner and format specified by the State.]

Record of Analyzing Laboratory Fortified Blanks

Purpose of LFB (check one):
☐Weekly Trigger Level Check
☐Monthly MDL Level Check

Units of Measure (check one):
☐Milligrams per Liter (mg/l)
☐Micrograms per Liter (µg/l)

Laboratory Name and Address

_____
_____
_____
_____
_____

Lab Identification Number: _____
Contact Person: _____
Phone : ( ) - _____
Method Identification : _____

Description of deviations from published method, if any (*e.g.,* columns, detectors, etc). Use reference to laboratory SOP or other QA documentation when appropriate.

_____
_____
_____
_____

Date	Analyte	Fortified concentration	Measured concentration
	.....	.....	
	.....	.....	
	.....	.....	
	.....	.....	
	.....	.....	
	.....	.....	
	.....	.....	

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V. Approved Analytical Methods & Acceptance Limits Under Chemical Monitoring Reform

Chemical & Acceptance Limit	Method Name	EPA	ASTM[13]	SM[14]	Other
Inorganic Chemicals (IOCs)					
Antimony ± 30% ≥ 0.006 mg/L	ICP-Mass Spectrometry	200.8 [7]	-----	-----	-----
	Hydride-Atomic Absorption	-----	D-3697-92	-----	-----
PRESERVATION & HOLDING TIME :	Atomic Absorption; Platform	200.9 [7]	-----	-----	-----
Conc HNO_3 to pH < 2 -- 6 months	Atomic Absorption; Furnace	-----	-----	3113B	-----
Arsenic NONE	Inductively Coupled Plasma	200.7 [7]	-----	3120B	-----
	ICP-Mass Spectrometry	200.8 [7]	-----	-----	-----
	Atomic Absorption; Platform	200.9 [7]	----	-----	-----
PRESERVATION & HOLDING TIME:	Atomic Absorption; Furnace	-----	D-2972-93C	3113B	-----
Conc HNO_3 to pH<2 -- 6 months	Hydride Atomic Absorption	-----	D-2972-93B	3114B	-----
Asbestos 2 σ	Transmission Electron Microscopy	100.1	-----	-----	-----
PRESERVATION & HOLDING TIME : Cool, 4° C	Transmission Electron Microscopy	100.2			
Barium ± 15% ≥ 0.15 mg/L	Inductively Coupled Plasma	200.7 [7]	-----	3120B	-----
	ICP-Mass Spectrometry	200.8 [7]	-----	-----	-----
PRESERVATION & HOLDING TIME :	Atomic Absorption; Direct	-----	-----	3111D	-----
Conc HNO_3 to pH < 2 -- 6 months	Atomic Absorption; Furnace	-----	-----	3113B	-----
Beryllium ± 15% ≥ 0.001 mg/L	Inductively Coupled Plasma	200.7 [7]	-----	-----	-----
	ICP-Mass Spectrometry	200.8 [7]	-----	-----	-----
PRESERVATION & HOLDING TIME :	Atomic Absorption; Platform	200.9 [7]	-----	-----	-----
Conc HNO_3 to pH < 2 -- 6 months	Atomic Absorption; Furnace	-----	D-3645-93B	3113B	-----
Cadmium ± 20% ≥ 0.002 mg/L	Inductively Coupled Plasma	200.7 [7]	-----	-----	-----
	ICP-Mass Spectrometry	200.8 [7]	-----	-----	-----
PRESERVATION & HOLDING TIME :	Atomic Absorption; Platform	200.9 [7]	-----	-----	-----
Conc HNO_3 to pH < 2 -- 6 months	Atomic Absorption; Furnace	-----	-----	3113B	-----
Chromium ± 15% ≥ 0.01 mg/L	Inductively Coupled Plasma	200.7 [7]	-----	3120B	-----
	ICP-Mass Spectrometry	200.8 [7]	-----	-----	-----
PRESERVATION & HOLDING TIME :	Atomic Absorption; Platform	200.9 [7]	-----	-----	-----
Conc HNO_3 to pH < 2 -- 6 months	Atomic Absorption; Furnace	-----	-----	3113B	-----
Cyanide ± 25% ≥ 0.1 mg/L	Manual Distillation followed by			4500-CN-C	
	Spectrometric, Amenable	-----	-----	4500CN-G	-----
	Spectrometric, Manual	-----	D-2036-91B	4500-CN-E	-----
PRESERVATION & HOLDING TIME :	Semi-automated	-----	D2036-91A	-----	I-3300-85 [16]
Cool, 4° C, NaOH to > 12 *** --- 14 days	Selective Electrode	335.4 [10]	-----	4500CN-F	-----
Fluoride ± 10% @ 1 - 10 mg/L	Ion Chromatography	300.0 [10]	D4327-91	4110B	-----
	Manual Distillation; Color. SPADNS	-----	-----	4500F-B,D	-----
	Manual Electrode	-----	D1179-93B	4500F-C	-----
	Automated Electrode	-----	-----	-----	380-75WE[17]
HOLDING TIME : 1 month	Automated Alizarin	-----	-----	4500F-E	129-71W[17]
Mercury ± 30% ≥ 0.0005 mg/L	Manual, Cold Vapor	245.1 [7]	D3223-91	3112B	-----
PRESERVATION & HOLDING TIME :	Automated, Cold Vapor	245.2 [11]	-----	-----	-----
Conc HNO_3 to pH < 2 -- 28 days	ICP-Mass Spectrometry	200.8 [7]	-----	-----	-----
Nitrate+Nitrite[18] ± 10% @ ≥ 0.4 mg/L	Ion Chromatography	300.0[10]	D4327-91	4110B	B-1011[9]
	Automated Cadmium Reduction	353.2[10]	D3867-90A	4500-NO_3-F	-----
PRESERVATION & HOLDING TIME:	Ion Selective Electrode	-----	-----	4500-NO_3-D	601[14]
Conc H_2SO_4 to pH < 2, 28 days	Manual Cadmium Reduction	-----	D3867-90B	4500-NO_3-E	-----
Nitrite ± 15% @ ≥ 0.4 mg/L	Ion Chromatography				
or Nitrate[18] ±10% @ ≥0.4 mg/L	Automated Cadmium Reduction	300.0[10]	D4327-91	4110B	B-1011[9]
	Manual Cadmium Reduction	353.2[10]	D3867-90A	4500-NO_3-F	-----
PRESERVATION & HOLDING TIME:	Spectrophotometric(Nitrite only)	-----	D3867-90B	4500-NO_3-E	-----
Cool, 4°C, 48 hours	Ion Selective Electrode (Nitrate only)	-----	-----	4500-NO_3-B	-----

CHEMICAL & ACCEPTANCE LIMIT	METHOD NAME	EPA	ASTM[13]	SM[14]	OTHER
Inorganic Chemicals [CONTINUED]					
Selenium ± 20% ≥ 0.01 mg/L	Hydride-Atomic Absorption	-----	D3859-93A	3114B	-----
	ICP-Mass Spectrometry	200.8 [7]	-----	-----	-----
PRESERVATION & HOLDING TIME :	Atomic Absorption; Platform	200.9 [7]	-----	-----	-----
Conc HNO_3 to pH < 2 -- 6 months	Atomic Absorption; Furnace	-----	D3859-93B	3113B	-----
Thallium ± 30% ≥ 0.002 mg/L	ICP-Mass Spectrometry	200.8 [7]	-----	-----	-----
PRESERVATION & HOLDING TIME :	Atomic Absorption; Platform	200.9 [7]	-----	-----	-----
Conc HNO_3 to pH < 2 -- 6 months					
Lead ± 30% ≥ 0.005 mg/L	Atomic Absorption, Furnace	-----	D3559-90D	3113B	
PRESERVATION & HOLDING TIME :	ICP-Mass Spectrometry	200.8 [7]	-----	-----	
Conc HNO_3 to pH < 2 -- 6 months	Atomic Absorption, Platform	200.9 [7]	-----	-----	
Copper ± 10% ≥ 0.050 mg/L	Atomic Absorption, Furnace	-----	D1688-90C	3113B	
	Atomic Absorption, Direct Aspiration	-----	D1688-90A	3111B	
	ICP	200.7 [7]	-----	3120B	
PRESERVATION & HOLDING TIME :	ICP-Mass Spectrometry	200.8 [7]	-----	-----	
Conc HNO_3 to pH < 2 -- 6 months	Atomic Absorption, Platform	200.9 [7]	-----	-----	
pH***	Electrometric	150.1 [11]	D1293-84	4500-H^+-B	
	----------	150.2 [11]	-----	-----	
Conductivity***	Conductance	-----	D1125-91A	2501B	
Calcium***	EDTA titrimetric	-----	D511-93A	3500-Ca-D	
	Atomic Absorption, Direct Aspiration	-----	D511-93B	3113B	
	ICP	200.7 [7]	-----	3120B	
Alkalinity***	Titrimetric	-----	D1067-92B	2320B	-----
	Electrometric Titration	-----	-----	-----	I-1030-85[16]
Orthophosphate	Colorimetric, Automated, Ascorbic acid	365.1[10]	-----	4500-P-F	-----
	Colorimetric, Ascorbic acid, Single reagent	-----	D515-88A	4500-P-E	-----
	Colorimetric, Phosphomolybdate;	-----	-----	-----	I-1601-85[16]
	Automated-segmented flow;	-----	-----	-----	I2601-90[16]
PRESERVATION & HOLDING TIME:	Automated-discrete	-----	-----	-----	I2598-85[16]
4°C, 48 hours max. (24 hours recommended)	Ion Chromatography	300.0[10]	D4327-91	4110	-----
Silica***	Colorimetric, Molybdate blue:	-----	-----	-----	I-1700-85[16]
	Automated-segmented flow	-----	-----	-----	I-2700-85[16]
	Colorimetric	-----	D859-88	-----	-----
	Molybdosilicate	-----	-----	4500-Si-d	-----
	Heteropoly blue	-----	-----	4500-Si-E	-----
	Automated method for molybdate-reactive silica	-----	-----	4500-Si-F	-----
	ICP	200.7 [7]	-----	3120B	-----
Temperature***	Thermometric	-----	-----	2550	-----
Sodium***	ICP	200.7 [7]	-----	-----	-----
	Atomic Absorption; Direct aspiration	-----	-----	3111B	-----
Synthetic Organic Compounds (SOCs)	Method Name	EPA	ASTM [13]	SM[14]	OTHER
2,4-D (Formula 40 Weeder 64)*** ± 50%	Liquid-Solid Extraction, Esterification & Gas Chromatography with an Electron Capture Detector	515.2 [4]	-----	-----	-----
	High Performance Liquid Chromatography w/ a Photodiode Array Ultraviolet Detector	555 [4]	-----	-----	-----
	Liquid-Liquid Extraction & Gas Chromatography with an Electron Capture Detector	515.1 [1]	-----	-----	-----
2,3,7,8-TCDD (Dioxin)*** 2 σ	Liquid-Liquid Extraction & Gas Chromatography with High Resolution Mass Spectrometry Detection	1613 [6]	-----	-----	-----
2,4,5-TP (Silvex)*** ± 50%	Liquid-Solid Extraction, Esterification & Gas Chromatography with an Electron Capture Detector	515.2 [4]	-----	-----	-----
	High Performance Liquid Chromatography w/ a Photodiode Array Ultraviolet Detector	555 [4]	-----	-----	-----
	Liquid-Liquid Gas Chromatography with an Electron Capture Detector	515.1 [1]	-----	-----	-----

CHEMICAL & ACCEPTANCE LIMIT		METHOD NAME	EPA	ASTM[13]	SM[14]	OTHER
Synthetic Organic Compounds [CONTINUED]		Method Name	EPA	ASTM [13]	SM[14]	OTHER
Alachlor (Lasso)***	± 45%	Micro Liquid-Liquid Extraction & Gas Chromatography with Electron Capture Detection Liquid-liquid Extraction, Gas chromatography with Nitrogen Phosphorous Detection Liquid Solid Extraction & Gas chromatography with Mass Spectrometry Detection Liquid-Solid Extraction &Gas Chromatography with Electron Capture Detector	505 [1] 507 [1] 525.2 [2] 508.1 [2]	----- ----- ----- -----	----- ----- ----- -----	----- ----- ----- -----
Atrazine***	± 45%	Micro Liquid-Liquid Extraction & Gas Chromatography with Electron Capture Detection Liquid-liquid Extraction, Gas chromatography with Nitrogen Phosphorous Detection Liquid Solid Extraction & Gas chromatography with Mass Spectrometry Detection Liquid-Solid Extraction & Gas Chromatography with Electron Capture Detector	505 [1] 507 [1] 525.2 [2] 508.1 [2]	----- ----- ----- -----	----- ----- ----- -----	----- ----- ----- -----
Benzo[a]pyrene***	2 σ	Liquid Solid Extraction + Capillary Column, Gas chromatography, Mass Spectrometry Liquid-Liquid Extraction & HPLC with Coupled Ultraviolet & Fluorescence Detection Liquid-Solid Extraction & HPLC with Coupled Ultraviolet & Fluorescence Detection	525.2 [2] 550 [5] 550.1 [5]	----- ----- -----	----- ----- -----	----- ----- -----
Carbofuran***	± 45%	Direct Aqueous Injection HPLC with Post Column Derivatization and Fluorescence Detector	531.1 [1]	-----	6610 [3]	-----
Chlordane***	± 45%	Micro Liquid-Liquid Extraction & Gas Chromatography with Electron Capture Detection Liquid-Liquid Extraction & Gas Chromatography w/an Electron Capture Detector Liquid Solid Extraction & Gas chromatography with Mass Spectrometry Detection Liquid-Solid Extraction & Gas Chromatography with Electron Capture Detector	505 [1] 508 [1] 525.2 [2] 508.1 [2]	----- ----- ----- -----	----- ----- ----- -----	----- ----- ----- -----
Dalapon***	2 σ	Ion Exchange Liquid-Solid Extraction, Esterification & Gas Chromatography with Electron Capture Detection Gas Chromatography with an Electron Capture Detector	552.1 [4] 515.1 [1]	----- -----	----- -----	----- -----
Di(2-ethylhexyl)adipate***	2 σ	Liquid-Liquid Extraction or Liquid-Solid Extraction & Gas Chromatography with Photoionization Detection Liquid Solid Extraction & Gas chromatography with Mass Spectrometry Detection	506 [5] 525.2 [2]	----- -----	----- -----	----- -----
Di(2-ethylhexyl)phthalate***	2 σ	Liquid-Liquid Extraction or Liquid-Solid Extraction & Gas Chromatography with Photoionization Detection Liquid Solid Extraction & Gas chromatography with Mass Spectrometry Detection	506 [5] 525.2 [2]	----- -----	----- -----	----- -----
Dibromochloropropane (DBCP)***	± 40%	Micro liquid-Liquid Extraction & Gas Chromatography with Electron Capture Detection Micro Liquid-Liquid Extraction & Gas Chromatography with Electron Capture Detection	504.1 [2] 551 [5]	----- -----	----- -----	----- -----
Dinoseb***	2 σ	Liquid-Solid Extraction, Esterification & Gas Chromatography with an Electron Capture Detector High Performance Liquid Chromatography w/a Photodiode Array Ultraviolet Detector Liquid-Liquid Extraction, Esterification & Gas Chromatography with an Electron Capture Detector	515.2 [4] 555 [4] 515.1 [1]	----- ----- -----	----- ----- -----	----- ----- -----
Diquat***	2 σ	Liquid-Solid Extraction & HPLC with Ultraviolet Detection Photodiode Array Detector	549.1 [4]	-----	-----	-----
Endothall***	2 σ	Ion Exchange Liquid-Solid Extraction, Esterification ,and Gas Chromatography with Mass Spectrometry Detection or Flame Ionization Detection	548.1 [4]	-----	-----	-----
Endrin***	± 30%	Micro Liquid-Liquid Extraction & Gas Chromatography with Electron Capture Detection Liquid-Liquid Extraction & Gas Chromatography with an Electron Capture Detector Liquid Solid Extraction & Gas chromatography with Mass Spectrometry Detection Liquid-Solid Extraction & Gas Chromatography with Electron Capture Detector	505 [1] 508 [1] 525.2 [2] 508.1 [2]	----- ----- ----- -----	----- ----- ----- -----	----- ----- ----- -----
Ethylene dibromide [EDB]***	± 40%	Micro Liquid-Liquid Extraction & Gas Chromatography with Electron Capture Detection Micro Liquid-Liquid Extraction & Gas Chromatography with Electron Capture Detection	504.1 [2] 551 [5]	----- -----	----- -----	----- -----
Glyphosate***	2 σ	Direct-Aqueous-Injection HPLC, Post-Column Derivatization with Fluorescence Detection	547 [5]	-----	6651	-----
Heptachlor epoxide***	± 45%	Micro Liquid-Liquid Extraction & Gas Chromatography with Electron Capture Detection Liquid-Liquid Extraction & Gas Chromatography with an Electron Capture Detector Liquid Solid Extraction & Gas chromatography with Mass Spectrometry Detection Liquid-Solid Extraction & Gas Chromatography with Electron Capture Detection	505 [1] 508 [1] 525.2 [2] 508.1 [2]	----- ----- ----- -----	----- ----- ----- -----	----- ----- ----- -----

CHEMICAL & ACCEPTANCE LIMIT	METHOD NAME	EPA	ASTM[13]	SM[14]	OTHER
Synthetic Organic Compounds [CONTINUED]	Method Name	EPA	ASTM [13]	SM[14]	OTHER
Heptachlor*** ± 45%	Micro Liquid-Liquid Extraction & Gas Chromatography with Electron Capture Detection	505 [1]	-----	-----	-----
	Liquid-Liquid Extraction & Gas Chromatography with an Electron Capture Detector	508 [1]	-----	-----	-----
	Liquid Solid Extraction & Gas chromatography with Mass Spectrometry Detection	525.2 [2]	-----	-----	-----
	Liquid-Solid Extraction & Gas Chromatography with an Electron Capture Detector	508.1 [2]	-----	-----	-----
Hexachlorocyclopentadiene*** 2 σ	Micro liquid-Liquid Extraction & Gas Chromatography with Electron Capture Detection	505 [1]	-----	-----	-----
	Liquid-Liquid Extraction & Gas Chromatography with an Electron Capture Detector	508 [1]	-----	-----	-----
	Liquid Solid Extraction & Gas chromatography with Mass Spectrometry Detection	525.2 [2]	-----	-----	-----
	Liquid-Solid Extraction & Gas Chromatography with an Electron Capture Detector	508.1 [2]	-----	-----	-----
Hexachlorobenzene*** 2 σ	Micro Liquid-Liquid Extraction & Gas Chromatography with Electron Capture Detection	505 [1]	-----	-----	-----
	Liquid-Liquid Extraction & Gas Chromatography with an Electron Capture Detector	508 [1]	-----	-----	-----
	Liquid Solid Extraction & Gas chromatography with Mass Spectrometry Detection	525.2 [2]	-----	-----	-----
	Liquid-Solid Extraction & Gas Chromatography with an Electron Capture Detector	508.1 [2]	-----	-----	-----
Lindane*** ± 45%	Micro Liquid-Liquid Extraction & Gas Chromatography with Electron Capture Detection	505 [1]	-----	-----	-----
	Liquid-Liquid Extraction & Gas Chromatography with an Electron Capture Detector	508 [1]	-----	-----	-----
	Liquid Solid Extraction & Gas chromatography with Mass Spectrometry Detection	525.2 [2]	-----	-----	-----
	Liquid-Solid Extraction & Gas Chromatography with an Electron Capture Detector	508.1 [2]	-----	-----	-----
Methoxychlor*** ± 45%	Micro Liquid-Liquid Extraction & Gas Chromatography with Electron Capture Detection	505 [1]	-----	-----	-----
	Liquid-Liquid Extraction & Gas Chromatography with an Electron Capture Detector	508 [1]	-----	-----	-----
	Liquid Solid Extraction & Gas chromatography with Mass Spectrometry Detection	525.2 [2]	-----	-----	-----
	Liquid-Solid Extraction & Gas Chromatography with an Electron Capture Detector	508.1 [2]	-----	-----	-----
Oxamyl (Vydate)*** 2 σ	Direct Aqueous Injection HPLC with Post Column Derivatization with a Fluorescence Detector	531.1 [1]	-----	6610 [3]	-----
Pentachlorophenol*** ± 50%	Liquid-Solid Extraction, Esterification & Gas Chromatography with an Electron Capture Detector	515.2 [4]	-----	-----	-----
	Liquid Solid Extraction & Gas chromatography with Mass Spectrometry Detection	525.2 [2]	-----	-----	-----
	High Performance Liquid Chromatography w/a Photodiode Array Ultraviolet Detector	555 [4]	-----	-----	-----
	Liquid-Liquid Extraction, Esterification & Gas Chromatography with an Electron Capture Detector	515.1 [1]	-----	-----	-----
Picloram*** 2 σ	Liquid-Solid Extraction, Esterification & Gas Chromatography with an Electron Capture Detector	515.2 [4]	-----	-----	-----
	High Performance Liquid Chromatography w/a Photodiode Array Ultraviolet Detector	555 [4]	-----	-----	-----
	Liquid-Liquid Extraction, Esterification & Gas Chromatography with an Electron Capture Detector	515.1 [1]	-----	-----	-----
Polychlorinated Biphenyls (PCBs)[15] *** as Aroclors as Decachlorobiphenyl 0 - 200%	Micro LLE &Liquid-Liquid Extraction & Gas Chromatography with Electron Capture Detection	505/508[1]	-----	-----	-----
	Liquid-Liquid Extraction, Perchlorination & Gas Chromatography with Electron Capture Detection	508A [1]			
Simazine*** 2 σ	Micro Liquid-Liquid Extraction & Gas Chromatography with Electron Capture Detection	505 [1]	-----	-----	-----
	Liquid-liquid Extraction, Gas chromatography with Nitrogen Phosphorous Detection	507 [1]	-----	-----	-----
	Liquid Solid Extraction & Gas chromatography with Mass Spectrometry Detection	525.2 [2]	-----	-----	-----
	Liquid-Solid Extraction & Gas Chromatography with an Electron Capture Detector	508.1 [2]	-----	-----	-----
Toxaphene*** ± 45%	Micro Liquid-Liquid Extraction & Gas Chromatography with Electron Capture Detection	505 [1]	-----	-----	-----
	Liquid-Liquid Extraction & Gas Chromatography with an Electron Capture Detector	508 [1]	-----	-----	-----
	Liquid Solid Extraction & Gas chromatography with Mass Spectrometry Detection	525.2 [2]	-----	-----	-----
Volatile Organic Compounds (VOCs)	Method Name	EPA	ASTM [13]	SM[14]	OTHER
1,1-Dichloroethylene*** ± 20% ≥ 0.010 mg/L ± 40% < 0.010 mg/L	Purge & Trap Capillary Column Gas Chromatography with Photoionization & Electrolytic Conductivity Detectors in Series	502.2 [1]	-----	-----	-----
	Capillary Column Gas Chromatography/Mass Spectrometry	524.2 [4]	-----	-----	-----
1,1,2-Trichloroethane*** ± 20% ≥ 0.010 mg/L ± 40% < 0.010 mg/L	Purge & Trap Capillary Column Gas Chromatography with Photoionization & Electrolytic Conductivity Detectors in Series	502.2 [1]	-----	-----	-----
	Capillary Column Gas Chromatography/Mass Spectrometry	524.2 [4]	-----	-----	-----

CHEMICAL & ACCEPTANCE LIMIT		METHOD NAME	EPA	ASTM[13]	SM[14]	OTHER
Volatile Organic Compounds [CONTINUED]		Method Name	EPA	ASTM [13]	SM[14]	OTHER
1,1,1-Trichloroethane***	± 20% ≥ 0.010 mg/L ± 40% < 0.010 mg/L	Purge & Trap Capillary Column Gas Chromatography with Photoionization & Electrolytic Conductivity Detectors in Series Capillary Column Gas Chromatography/Mass Spectrometry Liquid-Liquid Extraction & Gas Chromatography with Electron Capture Detection	502.2 [1] 524.2 [4] 551 [5]	----- ----- -----	----- ----- -----	----- ----- -----
1,2,4-Trichlorobenzene***	± 20% ≥ 0.010 mg/L ± 40% < 0.010 mg/L	Purge & Trap Capillary Column Gas Chromatography with Photoionization & Electrolytic Conductivity Detectors in Series Capillary Column Gas Chromatography/Mass Spectrometry	502.2 [1] 524.2 [4]	----- -----	----- -----	----- -----
1,2-Dichloropropane***	± 20% ≥ 0.010 mg/L ± 40% < 0.010 mg/L	Purge & Trap Capillary Column Gas Chromatography with Photoionization & Electrolytic Conductivity Detectors in Series Capillary Column Gas Chromatography/Mass Spectrometry	502.2 [1] 524.2 [4]	----- -----	----- -----	----- -----
1,2-Dichloroethane***	± 20% ≥ 0.010 mg/L ± 40% < 0.010 mg/L	Purge & Trap Capillary Column Gas Chromatography with Photoionization & Electrolytic Conductivity Detectors in Series Capillary Column Gas Chromatography/Mass Spectrometry	502.2 [1] 524.2 [4]	----- -----	----- -----	----- -----
Benzene***	± 20% ≥ 0.010 mg/L ± 40% < 0.010 mg/L	Purge & Trap Capillary Column Gas Chromatography with Photoionization & Electrolytic Conductivity Detectors in Series Capillary Column Gas Chromatography/Mass Spectrometry	502.2 [1] 524.2 [4]	----- -----	----- -----	----- -----
Carbon tetrachloride***	± 20% ≥ 0.010 mg/L ± 40% < 0.010 mg/L	Purge & Trap Capillary Column Gas Chromatography with Photoionization & Electrolytic Conductivity Detectors in Series Capillary Column Gas Chromatography/Mass Spectrometry Liquid-Liquid Extraction & Gas Chromatography with Electron Capture Detection	502.2 [1] 524.2 [4] 551 [5]	----- ----- -----	----- ----- -----	----- ----- -----
cis-1,2-Dichloroethylene***	± 20% ≥ 0.010 mg/L ± 40% < 0.010 mg/L	Purge & Trap Capillary Column Gas Chromatography with Photoionization & Electrolytic Conductivity Detectors in Series Capillary Column Gas Chromatography/Mass Spectrometry	502.2 [1] 524.2 [4]	----- -----	----- -----	----- -----
Dichloromethane***	± 20% ≥ 0.010 mg/L ± 40% < 0.010 mg/L	Purge & Trap Capillary Column Gas Chromatography with Photoionization & Electrolytic Conductivity Detectors in Series Capillary Column Gas Chromatography/Mass Spectrometry	502.2 [1] 524.2 [4]	----- -----	----- -----	----- -----
Ethylbenzene***	± 20% ≥ 0.010 mg/L ± 40% < 0.010 mg/L	Purge & Trap Capillary Column Gas Chromatography with Photoionization & Electrolytic Conductivity Detectors in Series Capillary Column Gas Chromatography/Mass Spectrometry	502.2 [1] 524.2 [4]	----- -----	----- -----	----- -----
Chlorobenzene***	± 20% ≥ 0.010 mg/L ± 40% < 0.010 mg/L	Purge & Trap Capillary Column Gas Chromatography with Photoionization & Electrolytic Conductivity Detectors in Series Capillary Column Gas Chromatography/Mass Spectrometry	502.2 [1] 524.2 [4]	----- -----	----- -----	----- -----
1,2-Dichlorobenzene***	± 20% ≥ 0.010 mg/L ± 40% < 0.010 mg/L	Purge & Trap Capillary Column Gas Chromatography with Photoionization & Electrolytic Conductivity Detectors in Series Capillary Column Gas Chromatography/Mass Spectrometry	502.2 [1] 524.2 [4]	----- -----	----- -----	----- -----
1,4-Dichlorobenzene***	± 20% ≥ 0.010 mg/L ± 40% < 0.010 mg/L	Purge & Trap Capillary Column Gas Chromatography with Photoionization & Electrolytic Conductivity Detectors in Series Capillary Column Gas Chromatography/Mass Spectrometry	502.2 [1] 524.2 [4]	----- -----	----- -----	----- -----
Styrene***	± 20% ≥ 0.010 mg/L ± 40% < 0.010 mg/L	Purge & Trap Capillary Column Gas Chromatography with Photoionization & Electrolytic Conductivity Detectors in Series Capillary Column Gas Chromatography/Mass Spectrometry	502.2 [1] 524.2 [4]	----- -----	----- -----	----- -----
Tetrachloroethylene***	± 20% ≥ 0.010 mg/L ± 40% < 0.010 mg/L	Purge & Trap Capillary Column Gas Chromatography with Photoionization & Electrolytic Conductivity Detectors in Series Capillary Column Gas Chromatography/Mass Spectrometry Liquid-Liquid Extraction & Gas Chromatography with Electron Capture Detection	502.2 [1] 524.2 [4] 551 [5]	----- ----- -----	----- ----- -----	----- ----- -----

CHEMICAL & ACCEPTANCE LIMIT		METHOD NAME	EPA	ASTM[13]	SM[14]	OTHER
Volatile Organic Compounds [CONTINUED]		Method Name	EPA	ASTM [13]	SM[14]	OTHER
trans-1,2-Dichloroethylene***	± 20% ≥ 0.010 mg/L	Purge & Trap Capillary Column Gas Chromatography with Photoionization & Electrolytic Conductivity Detectors in Series	502.2 [1]	----	----	----
	± 40% < 0.010 mg/L	Capillary Column Gas Chromatography/Mass Spectrometry	524.2 [4]	----	----	----
Trichloroethylene***	± 20% ≥ 0.010 mg/L	Purge & Trap Capillary Column Gas Chromatography with Photoionization & Electrolytic Conductivity Detectors in Series	502.2 [1]	----	----	----
	± 40% < 0.010 mg/L	Capillary Column Gas Chromatography/Mass Spectrometry	524.2 [4]	----	----	----
		Liquid-Liquid Extraction & Gas Chromatography with Electron Capture Detection	551 [5]	----	----	----
Vinyl Chloride***	± 40%	Purge & Trap Capillary Column Gas Chromatography with Photoionization & Electrolytic Conductivity Detectors in Series	502.2 [1]	----	----	----
		Capillary Column Gas Chromatography/Mass Spectrometry	524.2 [4]	----	----	----
Xylenes (total)***	± 20% ≥ 0.010 mg/L	Purge & Trap Capillary Column Gas Chromatography with Photoionization & Electrolytic Conductivity Detectors in Series	502.2 [1]	----	----	----
	± 40% < 0.010 mg/L	Capillary Column Gas Chromatography/Mass Spectrometry	524.2 [4]	----	----	----

BILLING CODE 6560–50–C

NOTES

1) "Methods for the Determination of Organic Compounds on Drinking Water", EPA-600/4-88-039, December 1988, revised, July 1991. This is available from the National Technical Information Service, (NTIS) PB91-231480, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. Call 800/553-6847. A nitrogen-phosphorous detector should be substituted for the electron capture detector in Method 505 (or use another approved method) to determine alachlor, atrazine and simazine, if lower detection limits are required.

2) EPA Methods 504.1, 508.1 and 525.2 are available from USEPA EMSL-Cincinnati, Cincinnati, OH 45268. Call 513/569-7586.

3) Method 6610 is contained in the "Supplement to the 18th edition of Standard Methods for the Examination of Water and Wastewater", 1994, American Public Health Association, 1015 Fifteenth street NW, Washington, D.C. 20005.

4) "Methods for the Determination of Organic Compounds in Drinking Water-Supplement II", EPA-600-R-92/129, August 1992; write, National Technical Information Service, (NTIS) PB92-207703, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. Call 800/553-6847.

5) "Methods for the Determination of Organic Compounds in Drinking Water-Supplement I", EPA/600-4-90/020, July 1990. Write, National Technical Information Service, (NTIS) PB91-146027, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. Call 800/553-6847.

6) EPA 821/B-94-005, October 1994, is available from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The toll-free number is 800-553-6847.

7) "Methods for the Determination of Metals in Environmental Samples-Supplement I," EPA-600/R-94-111, May 1994. This is available from the National Technical Information Service (NTIS), PB94-184942, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The toll-free number is 800-553-6847.

8) "Analytical Methods for Determination of Asbestos Fibers in Water," EPA/600-4-83-043, September 1983, U.S. EPA Environmental Research Laboratory, Atlanta, GA 30613.

9) Method B-1011, "Waters Test Method for Determination of Nitrite/Nitrate in Water Using Single Column Ion Chromatography", Millipore Corporation, Waters Chromatography Division, 34 maple Street, Milford, MA 01757

10) "Methods for the Determination of Inorganic Substances in Environmental Samples", EPA/600-R-93-100, August 1993. This is available from the National Technical Information Service (NTIS), PB94-121811, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The toll-free number is 800-553-6847.

11) Method 245.2 is available from USEPA, EMSL, Cincinnati, OH 45268. The identical method was formerly in "Methods for Chemical Analysis of Water and Wastes", EPA/600-4-79-020, March 1983, also available at National Technical Information Service (NTIS), PB84-128677.

12) "Methods of Chemical Analysis of Water and Wastes," EPA Environmental Monitoring and Support Laboratory, March 1979.

13) The procedures shall be done in accordance with the Annual Book of *ASTM Standards*, 1994, Vols. 11.01 and 11.02, American Society for Testing and Materials. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 5529 (a) and 1 CFR Part 51. Copies may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street, S.W., Washington, DC 20460; or at the Office of the Federal Register, 800 North Capital Street, N.W., Suite 700, Washington, DC.

14) The Procedure shall be done in accordance with the Technical Bulletin 601 "Standard Method of Test for Nitrate in Drinking Water,", July 1994, PN 221890-001, Analytical Technology, Inc. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 W.S.C/ 552(a) and 1 CFR {art 51/ Copies may be obtained from ATIO Orion, 529 Main Street, Boston, MA 02129.

15) PCBs are qualitatively identified as Aroclors and measured for compliance purposes as decachlorobiphenyl ADD Methods 505, 508, 508.1 and 525.2 ???.

16) Available from Books and Open-File Reports Section, U.S. Geological Survey, Federal Center, Box 25425, Denver, CO 80225-0425.

17) The Procedures shall be done in accordance with the Industrial method No. 129-71W, "Fluoride in Water and Wastewater", December 1972, and Method No. 380-75WE,"Fluoride in Water and Wastewater", February 1976, Technicon Industrial Systems. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the Technicon Industrial Systems, Tarrytown, NY 10591. Copes may be inspected at EPA's Drinking Water Docket, 401 M Street, SW, Washington, DC 20460; or at the Office of Federal Register, 800 Capitol Street, NW, Suite 700, Washington, DC.

18) Nitrate+Nitrite refers to a measurement of total nitrate. Nitrate may be measured separate from nitrite only in samples that have not been acidified and that have not been disinfected or only disinfected with a minimal oxidant, such as chloramine. Measurement of acidified samples or waters disinfected with free chlorine, chlorine dioxide or ozone provide a total nitrate (sum of nitrate plus nitrite) concentration.

*** See Methods for the information for preservation.

For the reasons set out in the preamble, Chapter I of Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 141—[AMENDED]

1. The authority for Part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, and 300j–9.

2. Section 141.2 is amended by adding the following definitions in alphabetical order.

§ 141.2 Definitions.

* * * * *

Periods of greatest vulnerability means the periods during which contamination is most likely to occur at the highest concentration at a particular sampling point, based on the history of relevant factors for that sampling point e.g., Weather Bureau precipitation averages, local pesticide application practices.

* * * * *

Time balanced average means the average of values representing equal segments of time, which are themselves the average of individual data points within each segment of time. For example, the sampling results throughout each quarter would be divided among the months of the quarter and the individual sampling results within each month would be averaged to determine the value for that month. The quarterly value would be the average of the three monthly values.

* * * * *

3. Section 141.23 is revised to read as follows:

§ 141.23 General monitoring provisions.

(a) *General*: Each community water system (CWS) and each non-transient, non-community water system (NTNCWS)—hereafter ''system'' in §§ 141.23 and 142.16(e)—shall monitor the contaminants under §§ 141.11(b), 141.61(a), 141.61(c), 141.62(b) (1) through (6) and 141.62(b) (10) through (15) in accordance with the requirements of this section. Failure to sample, or to report to or notify the State, in accordance with this section, or as directed by the State under this section and § 142.16(e), is a violation of the Safe Drinking Water Act.

(b) *Sampling Points*:

(1) Each system shall monitor, at each entry point to the distribution system, after treatment (if any).

(2) Systems shall sample at any sampling points the State may designate in addition to the entry point to the distribution system.

(c) *Responsibility to Provide Information*:

(1) Each system shall report the results of all sampling conducted under this section to the State, including detections ≤ the Method Detection Limit (MDL), in accordance with § 141.31 and in the format prescribed by the State.

(2) Each system shall provide any information requested by the State, within the time frame and in the format specified by the State. A failure to provide this information is sufficient reason for the State to require a system to sample more frequently than every five years.

(d) *Mandatory Monitoring*:

(1) Each system shall sample at least once every five years at each sampling point for the contaminants under §§ 141.11(b), 141.61(a), 141.61(c), 141.62(b) (1) through (6) and 141.62(b) (10) through (15). (2) If, for any reason, the State directs a system to sample more frequently than once every five years, the system shall sample at the frequency specified by the State.

(3) Each system shall sample during the periods of greatest vulnerability designated by the State. If the State does not designate the periods of greatest vulnerability, the system shall determine the periods of greatest vulnerability, describe to the State the risk-based reasons for the periods it specified, and sample at those times.

(4) If any of the following VOCs are detected at ≥0.5 µg/l at any sampling point, the system shall monitor for vinyl chloride at that sampling point within 30 days: trichloroethylene; tetrachloroethylene; 1,2-dichloroethane; 1,1,1-trichloroethane; cis-1,2-dichloroethylene; trans-1,2-dichloroethylene; or 1,1-dichloroethyhlene.

(e) *Detection ≥½ of the MCL*: If a contaminant is detected ≥½ of the MCL, including detections >MCL, the system shall sample as scheduled by the State under § 142.16(e)(3).

(f) *Detection >MCL*: If the results of a sample exceed the MCL, in concert with the requirements of paragraph (e), the system shall sample during each of the following three quarters. If the State schedules multiple samples during any quarter, a time balanced average must be used to determine the value for that quarter.

(1) Once an MCL violation has been established for a contaminant under paragraph (g) of this section, the system shall sample every year for that contaminant during the period of greatest vulnerability, unless the State specifies a different sampling schedule.

(2) If an MCL violation is not established upon completion of the monitoring required under this paragraph, the system shall continue sampling as directed by the State.

(g) *MCL Violations Determinations*: A system is in violation of the MCL if :

(1) The average of the four quarterly values exceed the MCL; or

(2) Any quarterly value, or any combination of less than four quarterly values, would cause the average annual concentration to exceed the MCL.

(h) *Laboratory Certification Criteria*:

(1) All samples to determine compliance with the MCLs in §§ 141.11(b), 141.61(a), 141.61(c), 141.62(b) (1) through (6) and 141.62(b) (10) through (15) must be analyzed by laboratories certified by EPA, or by the State in accordance with, and meeting the requirements described in, *EPA Technical Criteria Document for Selected Chemical Contaminants in Drinking Water*.

(2) The State or EPA may suspend or revoke a laboratory's certification for failure to consistently achieve the standards established under this paragraph.

(i) *New Systems & New Sources*: All public water systems and sources of water supplying a public water system that begin operations after [insert publication date of the final rule], shall demonstrate compliance with all applicable MCLs in this part within a period of time specified by the State, unless the State waives testing for certain contaminants in accordance with paragraph (h) of this section. In a State where EPA has primary enforcement authority, a new system or new source must demonstrate full compliance with the MCLs in §§ 141.11(b), 141.61(a), 141.61(c), 141.62(b) (1) through (6) and 141.62(b) (10) through (15), within the period of time specified by the Regional Administrator.

PART 142—[AMENDED]

4. The authority citation for Part 142 continues to read as follows:

Authority: 42 U.S.C. 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, and 300j-9.

* * * * *

5. Section 142.14 is amended by revising the introductory text of paragraph (d) and paragraphs (d)(4) and (d)(5) to read as follows:

§ 142.14 Records kept by States.

* * * * *

(d) Each State which has primary enforcement responsibility shall retain, for not less than 12 years, files which shall include for each public water system in each State:

* * * * *

(4) A record of the most recent targeting and vulnerability determination for each sampling point, including the monitoring results and other data supporting the determination, the State's findings based on the supporting data and any additional bases for such determination; except that it shall be kept in perpetuity or until a more current vulnerability determination has been issued. These records shall include State decision:

(i) Determinations related to targeting systems for increased sampling;

(ii) Determinations involving sampling points that have exceeded the trigger level;

(iii) Determinations related to the review of any such decisions that has been undertaken because of a change in the circumstances upon which the original decision was based.

(5) A record of all current monitoring requirements and frequencies for each contaminant and each sampling point, including those based on the targeting and vulnerability determinations identified under paragraph (d)(4) of this section. These records shall be kept in perpetuity, or until a more recent monitoring frequency decision has been issued.

* * * * *

6. Section 142.16(e) is revised to read as follows:

§ 142.16 Special primacy requirements.

* * * * *

(e) Chemical Monitoring Reform.

(1) Prior to implementing the provisions of 40 CFR 141.23, a State shall submit a primacy revision application that meets the requirements specified below. Approved State programs must operate in accordance with the provisions under § 141.23 and paragraph (e)(3) of this section and the approved State Targeting Plan.

(i) An application for approval of a State program revision to adopt the requirements under § 141.23, must include the State regulations (or implementing provisions) adopting those requirements, a description of the State Targeting Plan under paragraph (e)(2) of this section and a certification from the Attorney General that each of the provisions in its primacy revision application, and in any supplements thereto, are enforceable under State law.

(ii) The State's primacy revision application must also include a summary of public participation in the development of the State's program. At a minimum, the State process shall include an opportunity for public review of and comment upon the program elements identified above.

Alternative I for Paragraph (e)(2)

(e)(2) *Targeting Plans*. The State shall identify, and prescribe a sampling schedule for, each sampling point within each community water system and within each non-transient, non-community water system that may be vulnerable to contamination during the next five years. The State shall transmit its list of these sampling points to the Regional Administrator within one year after EPA has approved its primacy revision application, and thereafter upon request of the Regional Administrator. The State shall also update its list of targeted sampling points annually, and shall make the list available to the public upon request.

(i) The State shall develop a Targeting Plan describing:

(A) The State's procedures under § 141.23(d)(2) to screen all systems in order to identify vulnerable systems to sample more frequently than once every five years, and for determining the frequency of sampling based on the degree of vulnerability;

(B) The factors the State will consider in determining the periods of greatest vulnerability; and

(C) The State plans for periodically updating its list of targeted sampling points.

(ii) At a minimum, the targeting plan shall specify that a sampling point may be targeted to sample more frequently than every five years based on any one or a combination of the following factors:

(A) The fate and transport of a contaminant;

(B) The agricultural, commercial or industrial activities in the source water review area; or

(C) The susceptibility of the source water withdrawal point to contamination.

(iii) At a minimum, the State's factors for scheduling systems to sample during the periods of greatest vulnerability shall include each of the factors listed in paragraph (e)(2)(ii) of this section.

(iv) The State shall notify all systems of their sampling requirements in writing.

Alternative II for Paragraph (e)(2)

(e)(2) *Targeting Plans*: The State shall identify and prescribe a sampling schedule for each sampling point within each community water system and within each non-transient, non-community water system that must sample more frequently than once every five years, based on each sampling point's vulnerability to contamination. The State shall transmit its list of these sampling points to the Regional Administrator within one year after EPA has approved its primacy revision application.

(i) The State shall develop a plan describing

(A) The State's procedures under § 141.23(d)(2) to screen all systems in order to identify vulnerable systems to sample more frequently than once every five years and for determining the frequency of sampling based on the degree of vulnerability,

(B) The factors the State will consider in determining the periods of greatest vulnerability, and

(C) The State plans for periodically updating its list of targeted sampling points.

(ii) The State plan shall specifically target those sampling points served by surface water, or by ground water under the direct influence of surface water, to sample more frequently than every five years as specified by the State, unless (or until) the State determines that those points do not need to sample more frequently than every five years based on the degree of their vulnerability, or on the risk that such levels may pose to public health.

(iii) At a minimum, the targeting plan shall specify that a sampling point may be targeted to sample more frequently than every five years based on any one or a combination of the following factors:

(A) The fate and transport of a contaminant;

(B) The agricultural, commercial or industrial activities in the source water review area; or

(C) The susceptibility of the source water withdrawal point to contamination.

(iv) At a minimum, the State's factors for scheduling systems to sample during the periods of greatest vulnerability shall include each of the factors listed in paragraph (e)(2)(iii) of this section.

(v) The State shall notify all systems of their sampling requirements in writing.

(e)(3) *Detection ≥ ½ of the MCL:* Whenever the sampling result for a contaminant is ≥ ½ MCL, the State shall require the system to sample according to a special monitoring schedule, that has been designed to account for the estimated frequency and amplitude of contaminant fluctuation.

(i) In establishing a special monitoring schedule for a sampling point under this paragraph and § 141.23(e), the State shall consider:

(A) The history of sampling results for the sampling point and for neighboring sampling points;

(B) The sources of contamination and the susceptibility of the water supply to contamination;

(C) The periods of greatest vulnerability;

(D) The contaminant's solubility and other relevant characteristics; and

(E) The agricultural and commercial practices, and the efficacy of any source water protection measures that have been enacted, within the source water review area.

(ii) A State may determine that detections ≥ ½ of the MCL, but less than the MCL, will remain reliably and consistently below the MCL for five years, and may allow the system to sample at a minimum of once every five years.

(iii) The State shall document each sampling schedule, or the basis of its determination that the contaminant will remain reliably and consistently below the MCL, in writing.

* * * * *

7. Section 142.18 is revised to read as follows:

§ 142.18 EPA Review of State Determinations.

(a) A Regional Administrator may:

(1) Annul a State decision to grant a waiver, to designate a surrogate sampling point or to reduce nitrate monitoring under the Permanent Monitoring Relief provisions of section 1418 of the Safe Drinking Water Act; or

(2) Make a determination in the absence of State action under §§ 141.23(c) through (g)—in accordance with paragraph (b) of this section.

(b) When information available to a Regional Administrator, such as the results of an annual review, indicate that either a State monitoring determination, or the absence of a State monitoring determination, fails to apply the standards of the approved State program or of the guidelines published under section 1418(b)(2) of the Safe Drinking Water Act as amended, he may propose to annul the State monitoring determination or initiate an EPA monitoring determination by sending the State and the affected PWS a draft Monitoring Order. The draft Monitoring Order shall:

(1) Identify the PWS, the State determination and the provisions at issue;

(2) Explain why the State determination, or absence thereof, is not in compliance with the State program and must be changed; and

(3) Describe the actions and terms of operation the PWS will be required to implement.

(c) The State and PWS shall have 60 days to comment on the draft Monitoring Order.

(d) The Regional Administrator may not issue a Monitoring Order to impose conditions less stringent than those imposed by the State.

(e) The Regional Administrator shall also provide an opportunity for comment upon the draft Monitoring Order, by

(1) Publishing a notice in a newspaper in general circulation in the communities served by the affected system; and

(2) Providing 30 days for public comment on the draft order.

(f) The State shall demonstrate that its determination is reasonable, based on its approved program.

(g) The Regional Administrator shall decide within 120 days after issuance of the draft Monitoring Order to:

(1) Issue the Monitoring Order as drafted;

(2) Issue a modified Monitoring Order; or

(3) Cancel the Monitoring Order.

(h) The Regional Administrator shall set forth the reasons for his decision, including a responsiveness summary addressing significant comments from the State, the PWS and the public.

(i) The Regional Administrator shall send a notice of his final decision to the State, the PWS and all parties who commented upon the draft Monitoring Order.

(j) The Monitoring Order shall remain in effect until canceled by the Regional Administrator. The Regional Administrator may cancel a Monitoring Order at any time, so long as he notifies those who commented on the draft order.

(k) The Regional Administrator may not delegate the signature authority for a final Monitoring Order or the cancellation of an order.

(l) Violation of the actions, or terms of operation, required by a Monitoring Order is a violation of the Safe Drinking Water Act.

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Federal Register

Thursday
July 3, 1997

Part III

Department of Transportation

Federal Railroad Administration

49 CFR Part 213

Track Safety Standards; Miscellaneous Proposed Revisions; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 213

[Docket No. RST–90–1, Notice No. 5]

RIN 2130–AA75

Track Safety Standards; Miscellaneous Proposed Revisions

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: FRA proposes to amend the Track Safety Standards in order to update and enhance its track safety regulatory program. These proposed amendments present additional regulatory requirements necessary to address today's railroad operating environment including the introduction of standards specifically addressing high speed train operations. FRA proposes these changes to improve track safety and provide the railroad industry with the flexibility needed to effect a safer and more efficient use of resources. The proposed amendments reflect consensus recommendations submitted to FRA by the Railroad Safety Advisory Committee.

DATES: *Written comments:* Written comments must be received before September 15, 1997. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

Public hearing: A public hearing will be held in Washington, D.C. to allow interested parties the opportunity to comment on specific issues addressed in the NPRM. FRA will announce at a later date in this publication the date and location of the hearing.

ADDRESSES: *Written comments:* Comments should identify the docket number and the notice number and should be submitted in triplicate to: Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Mail Stop 10, Washington, D.C. 20590. Persons desiring to be notified that their written comments have been received by FRA should include with their comments a stamped, self-addressed postcard. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination during regular business hours in Room 7051 of FRA headquarters at 1120 Vermont Avenue, N.W., Washington, D.C.

Public hearing: The date and location of the public hearing will be announced at a later date in this publication.

FOR FURTHER INFORMATION CONTACT: Allison H. MacDowell, Office of Safety Enforcement, Federal Railroad Administration, 400 Seventh Street, S.W., Mail Stop 25, Washington, D.C. 20590 (telephone: 202–632–3344), or Nancy Lummen Lewis, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Mail Stop 10, Washington, D.C. 20590 (telephone: 202–632–3174).

SUPPLEMENTARY INFORMATION:

Introductory Statement

The text of the following proposed rule was recommended to FRA by the agency's Rail Safety Advisory Committee (RSAC), a standing committee composed of 48 representatives of the rail industry, rail labor and other interested parties, as well as FRA. The committee is tasked by the Federal Railroad Administrator (the Administrator) to formulate and present to FRA recommendations for new regulations and revisions of existing ones. The committee operates under a set of procedures provided to and discussed with all its members when the RSAC was first established.

In accordance with the procedures, the specific provisions of the proposed rule were developed by the Track Working Group, a subcommittee of the RSAC, which met periodically over a span of six months in 1996 to discuss track safety issues, developments in the industry, and possible solutions to current safety challenges. Each provision contained in the proposed rule received unanimous approval by the members of the Track Working Group, which included approximately 30 representatives from railroads, rail labor, trade associations, state government, track equipment manufacturers, and FRA. Such consensus is required by RSAC procedures before a proposal can be presented to the RSAC for consideration.

On October 18, 1996, all RSAC members were provided copies of the Track Working Group's proposed rule for review. At a public meeting on October 31, 1996, the Track Working Group presented its proposed rule to the RSAC for approval to recommend it to the Administrator. After discussion, the RSAC agreed, at the request of the Brotherhood of Maintenance of Way Employes (BMWE), to defer the vote on whether to recommend the proposed rule to the Administrator to provide that organization additional time to inform its members. The RSAC conducted a formal vote by mail on November 21, 1996. At that time, representatives of many of the labor unions withdrew support of the proposed rule and recommended that it be returned to the Track Working Group for further discussion.

Despite the lack of support by many RSAC representatives of rail labor, the number of votes cast in favor of recommending the proposed rule to the Administrator exceeded the number necessary for a simple majority. RSAC's procedures provide that where there is a majority vote to recommend to the Administrator a rule presented to the RSAC with full consensus of the working group that produced it, the RSAC will recommend adoption of the rule by the Administrator. Following those procedures, the RSAC formally recommended to the Administrator that FRA issue the proposed rule as it was drafted. The following proposed rule is the same rule text and preamble developed by the Track Working Group. However, the regulatory evaluation for the proposed rule varies somewhat from that submitted by the Track Working Group.

The cost/benefit evaluation of a proposed rule that enjoys unanimous support by all of the affected parties may contain assumptions which would not be appropriate for an analysis of a proposed rule that receives less than unanimous support. For example, unanimous support makes it easier to assume that costs are justified by benefits where they may be difficult to quantify. The Track Working Group submitted to the RSAC its proposed rule and cost/benefit analysis as it was approved by the group with unanimous consensus. As noted above, however, in the RSAC vote, members who represent almost entirely one definable segment of the rail industry voted to recommend that the proposed rule be returned to the working group for additional work. While the Track Working Group's proposed rule received majority consensus in the RSAC, its cost/benefit analysis was based on a premise that it would receive unanimous consensus.

In acknowledgment of the change in assumptions, FRA has attempted to incorporate additional data in the cost/benefit analysis that has been placed in the docket. The analysis cannot answer some important questions with the limited data now available. FRA requests that parties who have access to this data submit them to FRA during the comment period for this notice.

Specifically, FRA requests the following additional information:

- What nonreportable accidents occur on excepted track? How many are there by category and what do they cost? How much excepted track does not comply with the proposed gage standard, and how much will it cost to bring it into compliance?
- What accidents have been caused by the use of personnel not qualified under § 213.7 to move trains over defective track? How many are there by category and what do they cost? Have any accidents been caused by qualified personnel who have not received requalification training? How many are there by category and what do they cost?
- What accidents have been caused by torch-cut bolt holes in Class 2 track? How many are there by category and what do they cost?
- What accidents have been caused by torch-cut rails or joint bars reconfigured by torch cutting? How many are there by category and what do they cost?
- How many miles of track, by class would not comply with the proposed crosstie standard, and how much will it cost to bring them into compliance?
- What accidents have been caused by failure to operate a switch during inspections? How many are there by category and what do they cost?
- What accidents have been caused by inadequate inspection where the inspection involved inspection of multiple tracks from a hi-rail vehicle? How many are there by category and what do they cost?
- What other data do you have concerning the areas addressed by the benefit/cost analysis?

Information pertaining to these subjects should be submitted to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Mail Stop 10, Washington, D.C. 20590.

With this notice, FRA proposes to revise the Track Safety Standards, 49 C.F.R. Part 213, using the proposed rule developed by the Track Working Group and recommended by majority consensus by the RSAC, including the preamble and the cost/benefit evaluation as modified by FRA. The proposed rule is as follows:

I. Statutory Background

The Rail Safety Enforcement and Review Act of 1992, Public Law 102–365,106 Stat. 972 (September 3, 1992), later amended by the Federal Railroad Safety Authorization Act of 1994, Public Law 103–440, 108 Stat. 4615 (November 2, 1994), requires FRA to revise the track safety regulations contained in 49 CFR Part 213. Now codified at 49 U.S.C. § 20142, the amended statute requires:

''(a) Review of Existing Regulations.—Not later than March 3, 1993, the Secretary of Transportation shall begin a review of Department of Transportation regulations related to track safety standards. The review at least shall include an evaluation of—

(1) procedures associated with maintaining and installing continuous welded rail and its attendant structure, including cold weather installation procedures;

(2) the need for revisions to regulations on track excepted from track safety standards; and

(3) employee safety.

(b) Revision of Regulations.—Not later than September 1, 1995, the Secretary shall prescribe regulations and issue orders to revise track safety standards, considering safety information presented during the review under subsection (a) of this section and the report of the Comptroller General submitted under subsection (c) of this section.

* * * * *

(d) Identification of Internal Rail Defects.—In carrying out subsections (a) and (b), the Secretary shall consider whether or not to prescribe regulations and issue orders concerning—

(1) inspection procedures to identify internal rail defects, before they reach imminent failure size, in rail that has significant shelling; and

(2) any specific actions that should be taken when a rail surface condition, such as shelling, prevents the identification of internal defects.''

II. Regulatory Background

The first Federal Track Safety Standards were implemented in October, 1971, following the enactment of the Federal Railroad Safety Act of 1970 in which Congress granted to FRA comprehensive authority over ''all areas of railroad safety.'' See 36 FR 20336 and 49 U.S.C. 20101 *et seq.* FRA envisioned the new standards to be an evolving set of safety requirements subject to continuous revision allowing the regulations to keep pace with industry innovations and agency research and development.

FRA amended the Track Safety Standards with minor revisions several times in the past two decades. It began a project to revise the standards extensively in 1978, but later withdrew the effort when investigation revealed that considerably more data collection and analysis were necessary to support recommended revisions. A less extensive revision of the Track Safety Standards was issued in November, 1982. Since then, FRA has acquired much information crucial to further development of the Track Safety Standards through the enhanced statistical analysis capabilities resulting from additional field reporting requirements and improved data collection processes.

III. Petitions for Rulemaking

In May, 1990, the Brotherhood of Maintenance of Way Employees (BMWE) filed a petition with FRA to revise the Track Safety Standards. The petition suggested substantive changes to the standards, the addition of new regulations addressing recent developments in the industry, as well as the reinstatement of many of the regulations deleted from the standards in 1982. The BMWE also petitioned FRA to further address employee safety by incorporating in the Track Safety Standards certain sections of the Occupational Safety and Health Standards presently administered by the U.S. Department of Labor.

In March, 1992, the Association of American Railroads (AAR) submitted to FRA a list of recommended revisions to the Track Safety Standards. The AAR suggested some changes in the wording of existing regulations to provide additional flexibility to accommodate future innovations in railroad technology. Several suggested revisions included new approaches to determining compliance with certain existing regulations. Most notable among those was AAR's proposal that the revised track standards permit the use of a Gage Restraint Measuring System (GRMS) in place of detailed crosstie and fastener requirements. Lengthy discussions within the Track Working Group failed to result in any agreement about that proposal, and the RSAC postponed making a recommendation about the use of GRMS. On the other hand, RSAC recommended that railroads develop individual programs for installation and maintenance of continuous welded rail (CWR), provided those programs meet certain minimum criteria.

IV. Proceedings to Date

On November 16, 1992, FRA published an Advance Notice of Proposed Rulemaking (ANPRM) in this docket. See 57 FR 54038. The ANPRM summarized FRA's knowledge about developments in the rail industry in the past two decades and then posed some 52 questions regarding how those developments should be addressed in the revised track safety standards.

The ANPRM also announced plans for four public workshops in which

technically-knowledgeable persons with specialized experience in track maintenance were invited to share their views with FRA in an informal setting. The workshops were fact-finding sessions comprised of informal give-and-take exchanges between industry, labor, and government professionals charged with the administration of the track safety standards on a day-to-day basis. They comprised an initial step by FRA to use more active collaboration with labor, railroad management, manufacturers, state governments, and public interest associations in structuring the revised regulations.

The first workshop, held in Newark, New Jersey, on January 26, 1993, addressed such topics as responsibility of track owners, inspection qualifications, restoration/renewal of track, and the 30-day period in § 213.9. A second workshop in Atlanta, Georgia, on January 28, 1993, covered such subjects as lateral track resistance, gage restraint measurement, and vehicle track interaction. In the third workshop held in Denver, Colorado, on February 23, 1993, topics discussed were defective rails/remedial action, internal rail inspection frequency, system tolerances and reliability, and torch cut rail. The fourth workshop, a two-day session in Washington, D.C. on March 30–31, 1993, covered such items of interest as excepted track, inspection requirements, definitions, and the safety of maintenance-of-way employees.

Participants in the workshops included representatives of major and short line railroads, the AAR, the American Short Line Railroad Association, the BMWE, as well as individuals with a particular interest in certain areas of the track safety standards. In addition to the workshops, FRA invited interested persons to submit written comments to the questions posed in the ANPRM. Approximately 30 individuals, railroads, and industry groups submitted their suggestions and observations.

Following the workshop in Washington, which included an extensive discussion about the safety of maintenance-of-way employees, FRA decided to isolate that issue from this proceeding so that it could be addressed thoroughly in a separate rulemaking. That issue became the focus of a proceeding addressing roadway worker safety, FRA's first negotiated rulemaking. FRA established its first formal regulatory negotiation committee in 1994. After months of discussions and debates, the committee reached consensus conclusions and recommended provisions for an NPRM to the Federal Railroad Administrator on May 17, 1995. An NPRM based upon those recommendations was published on March 14, 1996 (see 61 FR 10528), and a final rule was issued on December 6, 1996 (see 61 FR 65959).

V. The Railroad Safety Advisory Committee

In past rulemakings, interested parties generally have approached the proceedings in an adversarial manner, a tactic that often inhibited the development of the best regulatory solutions to resolve difficult safety issues. In addition, parties also have resorted to pressuring Congress for legislation that would grant regulatory results with which FRA disagreed or were at odds with FRA's regulatory agenda. FRA concluded, therefore, that inclusion of these parties in its regulatory process would result in a more positive approach to developing the best solutions to pressing safety problems.

Although FRA gathered much information in the 1993 track workshops, as well as in similar workshops associated with other rulemaking proceedings, the agency recognized that continued use of these ''ad hoc'' collaborative procedures for each rulemaking was not the most effective means of accomplishing the agency's goal of achieving a more consensual regulatory program. Following the success in 1995 of the negotiated rulemaking addressing roadway worker safety, FRA decided that several pending rulemakings, including this proceeding to revise Part 213, should advance under a new rulemaking model that relies upon consensus among various members of the affected industry and the regulated community. On March 11, 1996, FRA announced formation of the Railroad Safety Advisory Committee (RSAC), the centerpiece of the agency's new regulatory program which emphasizes rulemaking by consensus with those most affected by the agency's regulations. See 61 FR 740.

The RSAC is comprised of 48 individual representatives drawn from 27 member organizations. The membership of the RSAC is representative of those interested in railroad safety issues, including railroad owners, manufacturers, labor groups, state government groups, and public interest associations. Its sponsor is the Federal Railroad Administrator, who recommends specific issues for it to address. The RSAC operates by consensus. It is authorized to establish smaller ''working groups'' to research and initially address the issues recommended by the Federal Railroad Administrator and accepted by the RSAC to resolve.

VI. Track Working Group

On April 2, 1996, the RSAC agreed to provide advice and recommendations to FRA for revision of the Track Safety Standards in 49 CFR Part 213. The RSAC then assigned that responsibility to a specialized working group comprised of approximately 30 representatives from labor, railroads, trade associations, state government groups, track equipment manufacturers, and FRA.

The Track Working Group met monthly from May, 1996, through October, 1996, to develop a draft NPRM to recommend to the RSAC. Minutes taken at each of the meetings are part of the docket for this rulemaking. The provisions contained in this document largely reflect the work accomplished by that group.

The Track Working Group identified issues for discussion from several sources. One source of issues was, of course, the statutory mandates issued by Congress in 1992 and in 1994. Several issues came to the Track Working Group by way of requests for consideration made by FRA's track safety Technical Resolution Committee. The group also examined track issues involved in a number of recommendations made to FRA by the National Transportation Safety Board (NTSB) in the past decade. Discussions utilized information acquired by FRA through its research and development program, as well as from findings from routine agency investigations and accident investigations. Finally, the Track Working Group systematically surveyed the existing regulations to identify those sections and subsections that needed updating or, in some cases, deletion.

Many of the issues engendered much discussion and debate within the Track Working Group. Brief summaries of those discussions are recorded in the appropriate parts of the section-by-section analysis portion of this document. Technical details supporting certain recommendations are not specified in this notice but are recorded in the docket and were discussed by the Track Working Group. A few issues have been designated by FRA to be ''major issues'' and are more fully discussed in the following section.

V. Major Issues

This section contains FRA's analysis of a number of significant issues that arose in this rulemaking. The analysis is based upon (1) discussions by the Working Group and RSAC; (2)

comments, both oral and written, received by the agency following publication of the ANPRM; (3) past statements of agency policies; (4) legal research; and (5) agency compliance experience.

A. Continuous Welded Rail (CWR)

In the first track safety standards published in 1971, § 213.119 dealt with CWR in a rather general manner, stating simply that CWR must be installed at a rail temperature that prevents lateral displacement of track or pull-aparts of rail ends, and that it should not be disturbed at rail temperatures higher than the installation or adjusted installation temperature. (See 36 FR 20341.) In 1979, when FRA proposed a significant revision of Part 213, the agency suggested that this subsection be eliminated because it provided ''little guidance to railroads'' and was ''difficult to enforce.'' The agency further stated that research had ''not advanced to the point where specific safety requirements can be established.'' (See 44 FR 52114.) However, when the proposed revision was withdrawn in 1981 (see 46 FR 32896), the proposal to eliminate § 213.119 was also abandoned. In the November, 1982 revisions to the Track Safety Standards § 213.119 was deleted.

In the Rail Safety Enforcement and Review Act of 1992, Congress mandated FRA to evaluate procedures for installing and maintaining CWR. In 1994, in the Federal Railroad Authorization Act, Congress added an evaluation of cold weather installation procedures to that mandate. Following evaluation of those procedures, FRA proposes to return CWR procedures to Part 213.

CWR is naturally subjected to high compressive and tensile forces which, if not adequately restrained, can result in track buckling or pull-aparts. The potential for track buckling increases as the ambient air temperature increases while the potential for pull-aparts increases as the ambient air temperature decreases. Track buckling tends to occur under train movement and therefore can be instantaneous and somewhat unpredictable.

In recent years, FRA engaged in a research program to develop criteria and guidelines for improving CWR's resistance to buckling. The program sought to (1) define critical forces and conditions associated with track buckling, (2) quantify parameters which govern the resistance of track to buckling, and (3) develop technology to detect incipient failures prior to track buckling. Railroads have also invested considerable resources into CWR research and employee training which has resulted in a marked decrease in the number of reportable buckled track incidents over the last decade. FRA's Accident/Incident data base reveals that the number of reportable buckled track derailments has been reduced by approximately 50% since 1985, dropping from a yearly average of approximately 60 instances to approximately 30 such occurrences per year.

How a railroad provides the adequate lateral resistance to prevent track buckling may vary from railroad to railroad. The Track Working Group found that consistent methodology is not as important as effective methodology in installing and maintaining CWR. Therefore, the Track Working Group's recommendations are premised on the concept that the regulations should provide railroads with as much flexibility as safely feasible. The proposed standard, contained in a new subsection (§ 213.119), allows railroads to develop and implement their individual CWR programs based on procedures which have proven effective for them over the years. At a minimum, procedures shall be developed for the installation, adjustment, maintenance, and inspection of CWR, as well as a training program and minimal requirements for recordkeeping. FRA proposes to monitor the railroads adherence to these procedures as well as the overall effectiveness of the CWR programs.

B. Excepted Track

With some limitations, the current regulation permits railroads to designate track as ''excepted'' from compliance with minimum safety requirements for roadbed, track geometry and track structure. This provision was intended to allow for limited periods of operation over track that was scheduled for abandonment or later improvement, and to permit operations over low density branch lines and related yard tracks in areas where it is highly unlikely that a derailment would endanger persons along the right-of-way. In general, the purpose of this provision has been realized.

However, the excepted track provision was not tightly drawn when added in 1982. Critics of the present provision argue that it permits tolerance of unsafe track conditions. For instance, trackage designated as ''excepted'' sometimes traverses residential areas or exists within close proximity to major population centers, and hazardous materials frequently are moved over these tracks with some regularity.

FRA added the excepted track provision (§ 213.4) to the regulations in response to an industry outcry for regulatory relief on those rail lines producing little or no income. FRA believed that without some relief for low density lines, railroads would accelerate abandonment of those lines rather than invest their slim resources where returns would be limited. Therefore, the 1982 revision provided the industry with a means to operate over designated tracks without complying with the substantive requirements of the Track Safety Standards. FRA believed that the designated tracks would be located on comparatively level terrain in areas where the likelihood was remote that a derailment would endanger a train crew or the general public.

The current provision contains a number of operating restrictions, including limitations on where excepted track can be located and the number of cars containing hazardous materials (five) that can be hauled in one train. Maximum speed is 10 m.p.h., and passenger service is prohibited.

Despite these limitations, railroads have embraced the concept of excepted track. In 1992, an FRA survey revealed the existence of approximately 12,000 miles of designated excepted track nationwide, far more than FRA envisioned when the provision was added to the regulations. Recent surveys conducted by the AAR and ASLRA, which were distributed to the Working Group members, currently indicate that between 8,000 and 9,000 miles of excepted track presently exists nationwide. FRA inspectors frequently find that railroads' legal use of the excepted track provision is far from the provision's original intent and purpose.

Comments given in response to the ANPRM, as well as some opinions expressed within the Track Working Group, demonstrate that many railroads favor maintaining an excepted track provision in the Track Safety Standards. They argue that accident and injury data do not support the notion that trackage in ''excepted'' status presents any significant safety hazard. Short line railroads strenuously argue that they depend on the provision in order to keep certain track segments in business. Many short lines operate over track they acquired just before abandonment by a major railroad. A significant number of those lines serve only a handful of industries with comparatively small gross tonnage. Eliminating the excepted track provision may result in the demise of service to many short line railroad shippers, thus prompting an increase in

rail traffic switching to highway transportation.

Others, however, favor abolishing the excepted track provision because they believe it promotes tolerance of poor maintenance practices and hazardous track conditions. Approximately 65% of all reportable derailments on excepted track from 1988 through the third quarter of 1995 were track-caused. Of this total, nearly 33% were attributed to wide gage as a result of defective crossties or rail fasteners. FRA and state inspectors have found instances where railroads have taken advantage of the permissive language in the section to conduct operations in a manner not envisioned by the drafters of the provision. For example, a railroad removes a segment of track from the excepted designation only long enough to move a train with more than five cars carrying hazardous materials, or to operate an excursion passenger train, and then replaces the segment in excepted status as soon as the movement is completed. However, FRA's enforcement policies and railroad compliance have reduced these instances.

For those reasons, the Track Working Group advised that the excepted track provision be retained with certain new restrictions. Significant revision proposed for § 213.4 includes a new requirement that the track owner must maintain gage to a 58¼″ standard, perform periodic switch inspections, and provide FRA with notification 10 days prior to removing track from excepted status. The revision also proposes to change the word ''revenue'' to ''occupied'' in describing passenger trains prohibited from operating over excepted track.

C. Liability Standard

The current track regulations are enforced against a track owner ''who knows or has notice'' that the track does not meet compliance standards. This knowledge standard is unique to the track regulations; other FRA regulations are based on strict liability. The knowledge standard is founded on the notion that railroads should not be held responsible for defects that may occur suddenly in remote locations. Today, after years of track abandonments by major railroads, the industry is responsible for maintaining about 200,000 miles of track. Many defects occur suddenly in remote areas, making it difficult for even the most diligent track inspectors to keep pace with all defects as they happen.

With a knowledge standard attached to the track regulations, railroads are held liable for non-compliance or civil penalties for only those defects that they knew about or those that are so evident the railroad is deemed to have known about them. FRA and state inspectors meet this knowledge standard in a number of ways. Sometimes they record and notify a railroad of a defect that they find, and then re-inspect 30 days later to see if the defect has been repaired. If it has not, they cite the railroad for a violation of the track safety standards. While this method provides a failsafe way of proving railroad notice of a defect, it is not always practicable for inspectors to perform follow-up inspections 30 days later.

Often, inspectors choose to inspect the railroad's own inspection records to see if a defect they have noted is recorded there. If it is, the inspection record forms proof that the railroad had notice of the defect. If the defect is not recorded in the railroad's inspection records, but is of the nature that it would have had to exist at the time of the railroad's last inspection (for example, defective crossties or certain breaks that are covered with rust), the defect's existence constitutes constructive knowledge by the railroad and the railroad is cited for a violation. Although these inspection methods are not enunciated in the regulations themselves, they reflect long-standing FRA enforcement policy and are explained in FRA's Track Enforcement Manual.

In its petition, the BMWE suggested that FRA put track owners under strict liability standard by removing the phrase ''knows or has notice'' from § 213.5. Under that standard, any defect found by an FRA inspector could be written as a violation regardless of the railroad's ignorance of it. The AAR requested in its petition that FRA develop performance standards for the track regulations. Certain defects would not be cited as long as the track is performing safely, making unnecessary many of the regulations (for example, inspection requirements and the minimum number of crossties). Neither the BMWE nor the AAR provided FRA with cost/benefit information to support their respective requests.

This notice proposes to adopt the recommendation by the Track Working Group and the RSAC to leave the standard of liability unchanged as the best balance of all interests. Railroads will continue to be held liable for track defects of which they knew or had notice. Notice may include constructive knowledge of defects that, by their nature, would have had to be in existence when the railroad was last required to perform an inspection.

D. Plant Railroads and Industrial Spurs

FRA has elected not to exercise jurisdiction over the safety of railroads that conduct their operations exclusively within an industrial or military installation. Such operations have not demonstrated the same degree and frequency of track problems found on tracks in the general system which are subject to heavier tonnages and more frequent use. Nevertheless, FRA recognizes its responsibility for the safety of railroad employees and operations inside such facilities where a general system railroad provides service on that property, either by picking up and placing cars for transportation in interstate commerce or by switching for the plant. The same responsibility applies to operations on privately owned industrial spurs used exclusively by a main line railroad to serve an industry.

The applicability section of the current Track Safety Standards (§ 213.3) excludes track ''located inside an installation which is not part of the general railroad system of transportation.'' This broad statement implies that the track standards do not apply anywhere inside a plant, regardless of who operates there or the type of operations that occur on the plant track. However, § 213.3 must be read in conjunction with 49 CFR Part 209, Appendix A, which explains that any plant railroad trackage over which a general system railroad operates becomes subject to FRA regulations. With the entrance of a general system railroad, the plant loses its insularity.

Since the enactment of the Federal Railroad Safety Act of 1970, FRA has had at its disposal statutory authority to issue emergency orders to repair or discontinue use of industrial or plant trackage should the agency find that conditions of the track pose a hazard of death or injury. See 49 U.S.C. § 20901. It is FRA's opinion that this emergency order authority is sufficient power to ensure track safety within plants or installations. However, if conditions or events in the future tend to demonstrate that track safety within plants or installations should be more specifically regulated, FRA will seek to change the applicability of this Part in a future rulemaking. This notice proposes to leave the application section of the Track Safety Standards unchanged.

E. Tourist Railroads

Congress granted FRA authority over all railroads, including tourist railroads, in 1970 when it enacted the Railroad Safety Act, now codified at 49 U.S.C. § 20102 *et seq.* In the 1970's and early

1980's, tourist railroads were few in number, and the agency decided to direct its manpower and resources towards ensuring safety on the freight carriers and major passenger lines. As the 1980's progressed, FRA began to witness a proliferation of tourist operations ranging in description from very small operations carrying only a handful of passengers a few days every year to large operations transporting hundreds of passengers daily. Many are financially constrained and dependent on volunteer labor, but others garner significant revenues from transportation of thousands of riders. The tourist railroad industry itself estimates that such railroads carry four to five million passengers each year.

In 1992, FRA developed a policy for exercise of agency jurisdiction over tourist railroads. The policy provides that FRA will exercise jurisdiction over all tourist railroad operations except those that are less than 24 inches in gage and/or insular. An insular tourist railroad is one where operations are limited to a separate enclave in such a way that they engender no reasonable expectation that the safety of any member of the public (except a business guest, a licensee or affiliated entity, or a trespasser) would be affected. An insular railroad cannot have a public highway-rail crossing in use, an at-grade rail crossing in use, a bridge over a public road or commercially navigable waters, or a common corridor of 30 feet or less with another railroad.

The current Track Safety Standards apply only to those tourist railroads that operate on the general system. Nevertheless, the Track Safety Standards serve as benchmarks for evaluating the safety of trackage off the general system.

In 1992, the Berkshire Scenic Railway Museum of Lenox, Massachusetts, petitioned FRA to conduct a special proceeding on all safety issues related to tourist railroads, suggesting that FRA phase in Class 1 track standards for those non-general system properties to which the standards do not currently apply. FRA denied the petition for a special proceeding because of the agency's many rulemaking commitments. However, FRA indicated a willingness to consider suggestions for modification of safety standards for tourist railroads within rulemaking proceedings already planned or underway.

In 1994, representatives of the tourist railroad industry proposed to Congress that it amend certain parts of 45 U.S.C. § 431, now recodified at 49 U.S.C. §§ 20101–20103, wherein FRA, through the Secretary of Transportation, is granted plenary authority over the safety of all railroads. The proposed legislation would have excluded tourist railroads from Federal safety laws even if they operate over the general system, as long as they do not ''interchange traffic'' with the general system. Thus, an unregulated tourist train could operate on the same track as a freight train, Amtrak, or commuter railroad. Congress agreed that such a change would not be wise safety policy. However, Congress also recognized that tourist railroads sometimes have unique characteristics that affect how they comply with Federal safety laws. Therefore, in enacting the Federal Railroad Safety Authorization Act of 1994, Congress instructed FRA to consider ''factors that may be unique'' to tourist railroads when prescribing safety regulations that would apply to those railroads. See 49 U.S.C. § 20103. Of course, FRA had already made an informal commitment to the industry to consider their unique factors in ongoing and future rulemakings.

FRA estimates that approximately 95 tourist railroads operating over 1,350 miles of standard gage track off the general system are not currently subject to the track safety standards. FRA sees the need to address this growing market and increasing safety exposure in the area of track safety, as well as other areas of rail operation. In April, 1996, the agency referred tourist railroad safety issues to the RSAC. The RSAC, in turn, established a working group comprised of agency and tourist railroad industry representatives to analyze the industry's unique aspects and formulate recommendations for appropriate regulation of that specialized industry. Because this working group will investigate and examine issues of track safety on tourist railroads, the Track Working Group decided not to discuss the subject. If the Tourist Railroad Working Group sees the need to propose changes to Part 213 to accommodate that industry, it will recommend to RSAC that FRA initiate a separate rulemaking to address those issues. Therefore, this notice proposes no changes to the Track Safety Standards that are directed specifically to tourist railroads.

F. Train Speed/Preemption

Under the current Track Safety Standards, FRA has only an indirect role in determining speed limits. Railroads set train speed in their timetables or train orders. Once a railroad sets a train speed, it must then maintain the track according to FRA standards for the class of track that corresponds to that train speed. The signal and train control regulations also fix limits on train speed based upon the type of signal system that is in place. If the railroad fails to comply with track or signal system requirements for speed at which trains are operated, the railroad is subject to penalty.

FRA's current regulations governing train speed do not afford any adjustment of train speeds in urban settings or at grade crossings. This omission is intentional. FRA believes that locally established speed limits may result in hundreds of individual speed restrictions along a train's route, causing train delays and increasing safety hazards. The safest train maintains a steady speed. Every time a train must slow down and then speed up, safety hazards, such as buff and draft forces, are introduced. These kinds of forces can enhance the chance of derailment with its attendant risk of injury to employees, the traveling public, and surrounding communities.

FRA always has contended that Federal regulations preempt any local speed restrictions on trains. Section 20106 of Title 49, United States Code (formerly 45 U.S.C. § 434) declares that—

''[l]aws, regulations, and orders related to railroad safety shall be nationally uniform to the extent practicable. A State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety when the law, regulation, or order—(1) is necessary to eliminate or reduce an essentially local safety hazard; (2) is not incompatible with a law, regulation, or order of the United States Government; and (3) does not unreasonable burden interstate commerce.''

FRA's long-held belief that Part 213 preempts local speed laws was verified by the U.S. Supreme Court in 1993 in the case *CSX* v. *Easterwood,* 507 U.S. 658 (1993). The Court held that legal duties imposed on railroads by a state's common law of negligence fall within the scope of preemption provision of 49 U.S.C. 20106, which preempts any state ''law, rule, regulation, order or standard relating to railroad safety.'' The Court said that preemption of such state laws ''will lie only if the federal regulations substantially subsume the subject matter of the relevant state law.'' *Easterwood,* 664. However, the Court further stated that because Part 213 ties certain track requirements to train speed, it should be viewed as ''covering the subject matter'' of speed limits.

Notwithstanding some of the language in *Easterwood* that a cursory reading may otherwise indicate, FRA has never

assumed the task of setting train speed. Rather, the agency holds railroads responsible for minimizing the risk of derailment by properly maintaining track for the speed they set themselves. For example, if a railroad wants its freight trains to operate at 59 m.p.h. between two certain locations, it must maintain the tracks between those locations to Class 4 standards.

In recent years, FRA has encountered increasing pressure from communities along railroad rights-of-way to set slower train speeds on main tracks located in urban areas. They typically cite the inherent dangers of grade crossings, as well as the risk of derailments of rail cars containing hazardous materials.

As to grade crossings, FRA has consistently maintained that their danger is a separate issue from train speed. The physical properties of a moving train virtually always prevent it from stopping in time to avoid hitting an object on the tracks regardless of the speed at which the train is traveling. Prevention of grade crossing accidents is more effectively achieved through the use of adequate crossing protection and through observance by the driving public of crossing restrictions and precautions. Therefore, FRA continues to sponsor and/or support initiatives to improve safety at grade crossings under the Department of Transportation's Grade Crossing Action Plan. These initiatives are geared towards enhancing enforcement of traffic laws at crossings, closing unneeded crossings, enhancing rail corridor crossing reviews and improvements, expanding public education and Operation Lifesaver activities, increasing safety at private crossings, improving data and research efforts, and preventing rail trespassing.

In January, 1995, FRA implemented regulations for maintenance, inspection and testing of warning devices at crossings, such as lights and gates. See 59 FR 50086. The agency also implemented regulations requiring certain locomotives to be equipped with auxiliary lights making trains more visible to motorists, railroad employees, and pedestrians. See 61 FR 8881. FRA believes that these measures are more effective approaches to enhancing safety at grade crossings than an attempt to design speed limits for each geographic situation.

G. Vegetation

The vegetation control requirements of Part 213 currently deal with fire hazards to bridges, visibility of railroad signs and signals, interference with normal trackside duties of employees, proper functioning of signal and communication lines, and the ability to inspect moving equipment (''roll by'' inspections). The regulation does not address the issues of motorists' ability to see warning devices at highway-rail crossings.

Since 1978, accidents and fatalities at highway-rail grade crossings have decreased dramatically due to engineering improvements at individual crossings, education of the public, and greater enforcement of highway traffic laws. Nevertheless, FRA finds that the present loss of life, injuries, and property damage are still unacceptable. In 1995, 579 people were killed, and 1,894 suffered serious injuries in grade crossing accidents. Highway-rail collisions are the number one cause of death in the entire railroad industry, far surpassing employee or passenger fatalities.

In lengthy discussions about vegetation at grade crossings, the Track Working Group found itself grappling with a very complex issue that cannot be resolved simply by requiring brush to be cut away from grade crossings. The Track Working Group considered a proposal which would have set sight distances for motorists approaching highway rail grade crossings. However, the group quickly realized that the issue requires the expertise of entities not represented on the Track Working Group or RSAC, e.g., state and federal highway designers, traffic engineers, as well as representatives of local jurisdictions with grade crossings. This notice, therefore, proposes only one addition to current requirements of railroads in maintaining vegetation. Under this proposal, railroads will be required also to clear vegetation away from signs and signals on railroad rights-of-way at grade crossings. Because the scope of Part 213 limits vegetation requirements to railroad property, this proposal does not attempt to dictate standards for surrounding landowners. The additional language is intended only to cover the clearing of vegetation at highway-rail grade crossings to provide adequate visibility of railroad signs and signals; it is not intended to cover or preempt state or local requirements for the clearing of vegetation on railroad rights-of-way at highway-rail grade crossings.

The RSAC views this proposed requirement as a first of several regulatory steps to reduce the inherent dangers of highway rail grade crossings. Along with the proposal for this additional requirement, the RSAC, following a recommendation by the Track Working Group, has requested that the FRA Administrator recommend that the Department of Transportation initiate a joint regulatory proceeding by FRA and the Federal Highway Administration to address vegetation maintenance and sight distances for motorists at grade crossings. Should the Department of Transportation decide not to initiate such a regulatory project, FRA will then consider the next appropriate action which may include launching its own regulatory proceeding.

H. Trackside Walkways

The Track Working Group agreed that it was not prepared at this time to recommend to the RSAC whether or not this proceeding should address trackside walkways. Therefore, this notice does not include any proposals or discussions addressing this issue.

I. Gage Restraint Measurement System

Historically, railroads assess a track's ability to maintain gage through visual inspections of crossties and rail fasteners. However, the inability of the track structure to maintain gage sometimes becomes apparent only after a derailment occurs. Many railroads throughout the country have successfully tested the GRMS, which was developed under a joint FRA/industry research project.

Accident statistics taken from FRA's Annual Accident/Incident Bulletins reveal that from 1985 through 1995, reportable wide gage derailments from defective crossties and fasteners totaled 2,232 instances and cost the industry over 60 million dollars in damages.

Current crosstie and fastener maintenance techniques rely heavily on visual inspections by track inspectors, whose subjective knowledge is based on varying degrees of experience and training. The subjective nature of those inspections sometimes create inconsistent determinations about the ability of individual crossties and fasteners to restrain track gage. Crossties may not always exhibit strong indications of good or bad condition. If a crosstie in questionable condition is removed from track prematurely, its maximum service life is unnecessarily shortened resulting in added maintenance costs for the railroad. Yet, a crosstie of questionable condition left too long in track can cause a wide-gage derailment with its inherent risk of injury to railroad personnel and passengers and damage to property. In many instances of gage failure caused by defective crossties and/or fasteners, the static or unloaded gage is within the limits prescribed by the current track standards. However, when a train applies an abnormally high lateral load to a section of track that contains

marginal crosstie or fastener conditions, the result is often a wide gage derailment.

In 1993, FRA granted CSX Transportation a waiver of compliance for the purpose of conducting a test program to evaluate the GRMS performance-based standard using FRA's research vehicle, in lieu of existing crosstie and rail fastening requirements, on nearly 500 miles of various track segments. The experience gained under this waiver has provided FRA with the opportunity to continually make adjustments to the conditional requirements of the waiver to the point where the technology has proven itself to be a more consistent method of objectively determining crosstie and fastener effectiveness. FRA believes the technology is now ready to be deployed within the industry.

Recently, CSX Transportation contracted for the design and construction of a GRMS vehicle which has been approved by FRA for the purposes of testing over the same waiver territory. CSX has contracted for a second GRMS vehicle to be built, and several other Class 1 railroads have also contracted for the development of GRMS vehicles. The key issue before the Working Group was whether this technology should be used as a supplement to the existing crosstie and fastener requirements, as an alternative to these existing requirements, or some combination of both.

The Track Working Group could not reach consensus on whether or not the revised standards should contain language to accommodate this technology. The RSAC has recommended that a small task group continue evaluating the possibility of developing GRMS standards for broader application within the industry. This notice invites public comment regarding the feasibility of this technology as an alternative inspection standard or as an additional inspection method.

J. High Speed Rail Standards

By this notice, FRA proposes to facilitate further development of high speed rail transportation by instituting safety standards for track to be used by high speed trains. Current regulations contain six classes of track that permit passenger and freight trains to travel up to 110 m.p.h. Passenger trains have been allowed to operate at speeds over 125 m.p.h. under conditional waiver granted by FRA. This notice proposes to add three new classes of track that will designate standards for track over which trains may travel at speeds up to 200 m.p.h. Standards for high speed track classes will be contained in a new Subpart G of Part 213 which will cover track Classes 6 through 9.

These proposed track standards constitute only one of several components comprising a regulatory program permitting trains to travel at high speeds. Other factors FRA must address in regulations outside of Part 213 include passenger emergency preparedness, wheel conditions, braking systems, and grade crossings. These proposed standards are an integral part of that larger regulatory scheme.

FRA's approach to track safety standards for high speeds is based on the fundamental principle that vehicles in the high speed regime must demonstrate that they will not exceed minimum vehicle/track performance safety limits when operating on specified track. In addition, railroads must monitor the vehicle/track system to ensure that the safety limits will be met under traffic conditions.

A panel of experts in high speed rail transportation worked with the Track Safety Working Group to provide recommendations for vehicle/track performance limits and track geometry. The panel identified acceleration and wheel/rail force safety criteria by reviewing technical studies, considering foreign experience and practices, and performing independent computer simulation and analytical studies. Once it identified vehicle/track performance limits, the panel developed specific geometry safety criteria. The panel also recommended requirements necessary for track structure to sustain the forces generated by vehicles at high speeds.

FRA's proposes to use the best available technical data about dynamic performance of vehicle/track systems to develop safety standards that are practical to implement. The proposed high speed standards in this notice provide for the qualification of vehicles; geometry standards for gage, surface, and alignment; track structure; and inspection requirements for both automated and visual inspections. While some of the sections in the proposed Subpart G are identical to their counterparts in other sections of the regulation, the standards for high speed operations generally differ markedly from those for the lower track classes which cover a much broader range of railroad vehicles. Several sections are unique to the high speed environment, and other sections are adapted from requirements for the lower track classes.

K. Torch Cut Rails

This notice addresses the practice by some railroads of using a torch to cut rail, a practice that was widespread in the railroad industry until a few years ago. Now the practice is used by most railroads only for emergency repairs in Classes 3 through 5 track, because technology has advanced to the point where cutting rail with the various types of rail saws that are readily available is more efficient than torch cutting. Nevertheless, torch cuts from years ago when the practice was more prevalent still exist and are believed by some to pose a safety hazard. In 1983, following its investigation of an Amtrak derailment in Texas, the NTSB recommended that torch cuts be removed and that trains move at only 10 m.p.h. over torch cuts made in emergency situations or as a preparatory step in field welding. It should be noted, however, that the rail involved in the Texas accident had a type of high alloy content which the industry now recognizes as inferior. It is no longer used in the industry.

Because rails that have been torch-cut have a greater tendency to develop fractures in the short term, members of the Track Working Group all agreed that the practice of torch-cutting rails should be prohibited in the future in Classes 3 through 5 track. However, they found it more difficult to agree on recommendations about what to do with existing torch cuts. Labor union representatives on the Track Working Group cited the known danger of torch cut rails in first suggesting that they all be removed from track in Classes 3 through 6. On the other hand, railroad representatives argued that torch cuts tend to cause rail to fail early. They also asserted that torch cuts that have existed for a long time generally will not cause rail breakage.

All parties agreed that torch cuts existing on yard tracks and main tracks where trains operate at slow speeds (Classes 1 and 2) do not pose as high a risk. FRA could provide no reliable data on the number of existing torch cuts. The railroads reported that torch cuts no longer exist on Class 6 track, and the torch cuts remaining in Class 5 track nationwide probably number ''in the hundreds.''

The Track Working Group agreed to recommend to the RSAC that existing torch cuts in track Classes 1 and 2 be allowed to remain. However, the practice of torch cutting rails in track Classes 3 and above, except for emergency temporary repairs, will be prohibited in the future. Existing torch cuts in Class 3 track over which regularly scheduled passenger trains operate will be inventoried and any torch cuts that are found later but are not listed on the inventory must be removed. Torch cuts in Class 4 track

must be removed within two years of the effective date of this rule, and torch cuts in Class 5 track must be removed within one year. The RSAC and FRA adopted this proposal, further discussed in the Section-by-Section portion of this notice.

L. Metric System

In the 1992 ANPRM, FRA requested comments in response to a proposal to create a dual system of measurements, English and metric, for inclusion in these regulations. Responses were varied. Some commenters suggested that FRA implement metric standards, while others recommended that a dual system would be better. Still others argued that the addition of metric standards, whether as a single standard or in a dual system with English standards, would cause confusion in the industry. They added that computerized recordkeeping would have to be re-programmed at a significant expense.

The RSAC, after a discussion of the issue by the Track Working Group, decided not to recommend the addition of metric standards at this time. Therefore, FRA concludes that the introduction of metric values into the regulations is not appropriate at this time.

* * * * *

Section By Section Analysis

Section 213.1—Scope of the Part

The proposed amendment to this section would eliminate the word ''initial.'' When the Track Safety Standards were first published in 1971, they were referred to as ''initial safety standards'' because they were the first Federal standards addressing track safety. Twenty-five years and several amendments later, the current Track Safety Standards are no longer initial standards. Therefore this amendment will eliminate a mischaracterization of the standards by removing the outdated descriptive ''initial.''

Section 213.2—Preemptive effect

This notice proposes to add this section to Part 213 to indicate that states cannot adopt or continue in force laws related to the subject matter covered in this rule, unless such laws are needed to address a local safety hazard and they impose no undue burden on interstate commerce. This section is consistent with the mandate of 49 U.S.C. § 20106, formerly § 205 of the Federal Railroad Safety Act of 1970. Although the courts ultimately determine preemption in any particular factual context, this section provides a statement of agency intent and promotes national uniformity of regulation in accordance with the statute.

Section 213.3—Application

This notice does not propose to amend this section. The RSAC's Track Working Group discussed amending subsection (b) to reference Appendix A of Part 209 in an effort to clarify FRA's safety policy toward trackage used by general system railroads within the confines of installations. According to Appendix A of Part 209, an plant owner is held liable for the safety of any plant trackage over which a general system railroad operates. The Working Group advised that a reference to Appendix A of Part 209, which is merely a statement of FRA policy, could have the effect of making all provisions of Part 213 enforceable against thousands of plant owners, at least to the extent over which general system railroads operate within plant borders. Such a result would be more far-reaching than intended by the RSAC. Even while FRA declines to apply Part 213 to plant railroads, the agency continues to have safety jurisdiction over those railroads and may invoke its statutory emergency authority if it deems it necessary in order to safeguard anyone from the hazard of death or personal injury.

Section 213.4—Excepted Track

This notice proposes to maintain the provision for excepted track with added restrictions for its use and maintenance. Since its inception in 1982, the excepted track category has become an economic issue for some small railroads, particularly short line railroads and low volume shippers. It allows railroads to continue to use, on a limited basis, low-density trackage that does not earn sufficient revenue to justify the expense of maintaining it to higher track standards. It allows short lines to acquire and use trackage that may have been abandoned by larger railroads, thereby preserving rail service to shippers and avoiding the necessity of shifting traffic over those lines from moving to some other, perhaps more hazardous, means of transport.

Because the majority of reportable derailments on excepted track are track-caused, and the majority of this total are wide gage related, this notice proposes to institute a requirement that gage must not exceed of 58¼'' on excepted track. This requirement will only apply to the actual gage measurement itself, and will not extend to the evaluation of crossties and fasteners which provide the gage restraint. A clarification has been added to the inspection requirements on excepted track which specifically reference turnout inspections as being required under this section.

The proposal also includes a requirement that railroads notify FRA at least 10 days before removing trackage from excepted status. This provision is to prevent the practice FRA has witnessed in the past by some railroads who remove trackage from excepted status only long enough to move a passenger excursion train or a train with more than five cars containing hazardous materials. Furthermore, the proposal includes an edit to § 213.4(e)(2) which changes the word ''revenue'' to ''occupied'' in describing passenger trains prohibited from operating over excepted track. This change addresses a misconception by some railroads that they could operate passenger excursion trains over excepted track as long as they did not charge passengers admission for a ride. The proposed change clarifies that the prohibition is directed toward all passengers but is not meant to include train crew members, track maintenance crews, and other railroad employees who must travel over the track to attend to their work duties.

Section 213.5—Responsibility of track owners

This notice proposes changes to subsections (c) and (d) to modify the way in which track owners may assign compliance responsibility to another entity. Under the current regulations, a track owner may petition the Federal Railroad Administrator to recognize another party as the one primarily responsible for the maintenance and inspection of the owner's track. This provision is intended to facilitate compliance by track owners whose track is leased to another entity for operation. Often track owners (e.g., municipal communities, county governments) do not have the necessary expertise to maintain compliance with Federal track standards, but their track lessees do. Thus, track owners can successfully petition FRA for reassignment of primary responsibility by providing certain information about the assigned party and the relationship of the assigned party to the track owner. When such a petition is approved by FRA, the assigned party becomes responsible, along with the track owner, for compliance with Part 213.

The proposed change for these subsections eliminates the approval process by FRA, shown in years past to be the cause of unnecessary paperwork. Records show that FRA has approved almost every such petition it has reviewed. Under the proposed subsection, a track owner could reassign

responsibility to another entity simply by notifying FRA's regional administrator for the FRA region in which the track is located. The notification would include the same information required for the petitions under the current standards. However, FRA would discontinue its practice of publishing in the **Federal Register** the petitions for reassignment, along with requests for public comment. The reassignments would no longer be reviewed by FRA's Railroad Safety Board.

FRA believes that the proposed change would not diminish track safety. Although the intent of the original subsection was to give FRA some control over who should be responsible for maintaining track, the practical application of the subsection has shown that such control by the agency is unnecessary. Rather, it is more important for FRA to know what party or parties to hold responsible for compliance with track safety standards. Therefore, the proposed subsection (c) would require notification to the agency of reassignments of track responsibility, but it would no longer require approval by FRA now required in subsection (d). The text currently shown as subsection (d) would be eliminated.

This notice also proposes one minor change in current subsection (e), substituting the name ''Surface Transportation Board'' for ''Interstate Commerce Commission.'' This substitution is meant to reflect Congress'' action in 1995 to eliminate the Interstate Commerce Commission and turn over many of its functions to the new Surface Transportation Board within the Department of Transportation. With the elimination of the current text of subsection (d), this subsection now designated as (e) would become subsection (d).

Section 213.7—Designation of qualified persons to supervise certain renewals and inspect track

In the past, FRA has interpreted this section in a way that allowed signal maintainers and other railroad employees to pass trains over broken rails or pull-aparts in situations when they were the first on the scene to investigate a signal or track circuit problem. Under this interpretation, the intent of the regulation would not be violated if signal maintainers or others had been given selected training relating to the safe passage of trains over broken rails and pull-aparts. The BMWE, however, has argued that this section was never intended to allow for the partial qualification of personnel on Part 213 standards.

The RSAC recommends the creation of a new subsection (d) which prescribes the manner in which persons not fully qualified as outlined in paragraphs (a) and (b) of this section may be qualified for the specific purpose of authorizing train movements over broken rails and pull-aparts. Language in the new paragraph is specific to employees with at least one year of maintenance of way or signal experience and requires a minimum of four hours of training and examination on requirements related to the safe passage of trains over broken rails and pull-aparts. The purpose of the examination is to ascertain the person's ability to effectively apply these requirements. It is not to be used as a test to disqualify the person from other duties.

The maximum speed over broken rails and pull-aparts shall not exceed 10 m.p.h. However, movement authorized by a person qualified under this subsection may further restrict speed over broken rails and pull-aparts if warranted by the particular circumstances. This person must watch all movements and be prepared to stop the train if necessary. Fully qualified persons under § 213.7 must be notified and dispatched to the location promptly to assume responsibility for authorizing train movements and effecting temporary or permanent repairs. The word ''promptly'' is meant to provide the railroad with some flexibility in events where there is only one train to pass over the condition prior to the time when a fully qualified person would report for a regular tour of duty, or where a train is due to pass over the condition before a fully qualified person is able to report to the scene. Railroads should not use persons qualified under 213.7(d) to authorize multiple train movements over such conditions for an extended period of time.

Section 213.9—Classes of Track: Operating Speed Limits

This notice proposes to move Class 6 standards to Subpart G, a new subpart which establishes track safety standards for high speed rail operations. The new subpart will consist of Class 6 and three new track classes, Classes 7 through 9, to accommodate train speeds up to 200 m.p.h. The Track Working Group and the RSAC recommend including Class 6 in the high speed standards because that class of track already requires certain heightened maintenance practices not required by the lower classes of track.

Section 213.11—Restoration or Renewal of Track Under Traffic Conditions

An added phrase recommended by the RSAC for the end of this section would clarify a qualified inspector's authority to limit the speed of trains operating through areas under restoration or renewal. In the Track Working Group, the BMWE expressed concern that the current language of the section provides no guidance for track inspectors determining the appropriate speed through restoration areas. The language proposed by this notice gives a qualified track inspector discretion to set train speed through a work area, but does not allow the inspector to authorize trains to operate at speeds faster than the maximum speed for the appropriate track class. This change does not represent a change to past interpretation and enforcement of this section; it is merely a clarification of established policy.

Section 213.15—Civil Penalty

This notice proposes no changes to this section. The section covers all subparts to this part, including Subpart G. Appendix B, which sets forth the civil penalty schedule for violations of this part, will be revised in the final rule to include civil penalties for violations of Subpart G.

Section 213.17—Exemptions

The Track Working Group considered a proposal by the BMWE that this section be eliminated. However, the group agreed that the existing language allowing for the temporary suspension of certain track standards is appropriate and exemptions are necessary for the industry to experiment with alternative methods of compliance and new technology. Therefore, the RSAC recommended that this section be left as currently written, and this notice proposes no changes to it.

Section 213.33—Drainage

In its 1990 petition for revision of the track standards, the BMWE requested that this section be expanded to include more specific requirements for drainage and water diversion around track roadbeds, addressing water seeping toward the track, water falling upon the roadbed, cross drainage, and the use of geotextiles. The proposal was discussed by the Track Working Group, as was a proposal by the AAR that merely modified the phrase ''clear of obstruction'' to ''sufficiently clear of obstruction.'' After much discussion, the group recommended to the RSAC that the section be left unchanged. Therefore, this notice does not propose any changes to the requirements for

maintaining proper drainage adjacent to roadbeds.

Section 213.37—Vegetation

This notice proposes to add a phrase to subsection (b) to include in the requirement to clear vegetation from signs and signals along railroad rights-of-way and at highway rail grade crossings. The current regulation stipulates only that vegetation cannot interfere with visibility of railroad signs and signals. Because the scope of Part 213 limits vegetation requirements to railroad property, this proposal does not attempt to dictate standards for surrounding landowners. The additional language is intended only to cover the clearing of vegetation at highway-rail grade crossings to provide adequate visibility of railroad signs and signals; it is not intended to cover or preempt state or local requirements for the clearing of vegetation on railroad rights-of-way at highway-rail grade crossings.

Section 213.55—Alignment

This notice proposes to introduce a 31-foot chord requirement, in addition to the present 62-foot chord requirement, for measuring alignment on curves in Classes 3 through 5 track. The RSAC, on advice from the Track Working Group, recommends this addition to control transient short wavelength variations in alignment. This control is considered necessary to introduce an averaging approach for the application of the V_{max} formula which determines the maximum allowable operating speed for each curve. The change in the application of the V_{max} formula is discussed in § 213.57 of this notice.

Section 213.57—Curves; Elevation and Speed Limitations

The existing subsection (a) limits the design elevation on curves to a maximum of six inches. However, this subsection also provides for a deviation from this design elevation, which is contained in the § 213.63 table. For a curve elevated to six inches in Class 1 track, the allowable deviation would be three inches and therefore any point in that curve could have as much as nine inches of elevation and remain in compliance. For a similar situation in Class 3 track, any point in that curve could have as much as seven and three-fourths inches of elevation and still be in compliance. For modern rail cars with a high center of gravity, low speed curve negotiation under excessive levels of superelevation places the vehicle in an increased state of overbalance. This condition creates the possibility of wheel unloading and subsequent wheel climb when warp conditions are encountered within the curve.

The Track Working Group considered the characteristics of the present-day vehicle fleet and concluded that a lower limit on maximum elevation in a curve should be prescribed in the regulations. Therefore, this notice proposes to revise subsection (a) to limit the amount of superelevation at any point in a curve to not more than eight inches on Classes 1 and 2 track, and not more than seven inches on Classes 3 through 5 track.

Subsection (b) of this section addresses the maximum allowable operating speed for curved track. The equilibrium speed on a curve is the speed where the resultant force of the weight and centrifugal force is perpendicular to the plane of the track. The American Railway Engineering Association's (AREA) Manual of Engineering, Chapter 5, states that passenger cars have been shown to ride comfortably around a curve at a speed which produces three inches of underbalance, or otherwise stated, three inches less elevation than would be required to produce equilibrium conditions. The AREA Manual sets forth a formula based on the steady-state forces involved in curve negotiation which is commonly referred to as the V_{max} formula. This formula considers the variables of elevation, curvature, and the amount of unbalanced elevation or cant deficiency in determining the maximum curving speed. The present standards under subsection (b) limit curving speed based on a maximum of three inches of unbalance or cant deficiency and is commonly referred to as the ''three-inch unbalance formula''. FRA has granted waivers for other levels of unbalance on specified equipment.

Over the years, railroad engineers have differed as to the application of this three-inch unbalance formula. Some engineers have suggested the designed elevation and curvature should be used to calculate the maximum operating speed around a curve. Other engineers recommend that an average of the entire curve or segment of the curve better recognizes situations where steady-state conditions change. For example, the elevation may be decreased through a road crossing to accommodate road levels and then increased beyond the crossing.

Recognizing the origin and purpose of the V_{max} formula, the Track Working Group recommended that an average of the alignment and crosslevel measurements through a track segment in the body of the curve should be used in the formula to arrive at the maximum authorized speed. This approach recognizes the ''steady-state'' purpose of the formula. Transient locations (points) are covered by the alignment and track surface tables. Normally, approximately 10 stations are used through the track segment, spaced at 15′6″ apart. If the length of the body of the curve is less than 155 feet, measurements should be taken for the full length of the body of the curve.

This uniform or averaging technique over the 10 stations through the track segment is consistent with the concept used by the vehicle/track dynamicists who discuss ''g'' levels in steady-state conditions, often considered to be one or two seconds. At 80 m.p.h., a vehicle will have traversed approximately 118 feet of track in one second. Measurements taken over 155 feet (10 stations at 15′6″) provides the necessary distance to determine the behavior of the vehicle over the one-or two-second steady-state interval.

Analysis has shown that, although application of the V_{max} formula on a point-by-point basis is overly conservative, it does provide for the coverage of certain combinations of alignment and crosslevel deviations in Classes 3 through 5 track which could result in wheel climb derailments. However, further analysis has shown that these transient short-wave anomalies can be covered by the introduction of a 31-foot chord to the alignment table contained in § 213.55.

The Track Working Group also recommended the addition of new paragraphs (c), (d), (e), and (f) which will permit curving speeds based on four inches of unbalance or cant deficiency for certain categories of equipment that demonstrate safe curving performance at this level of unbalance. The means of qualification is a basic procedure known as a ''static lean'' test that has been used many times in recent years for the testing of equipment for operation at higher cant deficiencies. Although four inches of cant deficiency is usually applied to passenger trains, other types of equipment with comparable suspension systems, centers of gravity, and cross-sectional areas may perform equally well. On the other hand, the Track Working Group did not intend to suggest that standard freight equipment must have the prerequisite vehicle characteristics which would allow curving speeds based on more than three inches of cant deficiency. The Track Working Group recommended that FRA review the information provided by the track owner or operator to verify safe curving performance and approve the proposal before the vehicles are operated at four inches of cant deficiency.

This notice proposes to revise Appendix A, which currently contains a table specifying the maximum allowable operating speed for each curve based on three inches of cant deficiency. Under this proposed change, Appendix A would be amended to include two tables. Table 1 would be identical to the current table, while Table 2 would specify curving speeds based on four inches of cant deficiency.

Section 213.63—Track Surface

The present track surface table contained in this section was established in the original standards more than 20 years ago and has served the industry well as a minimum safety requirement. However, some of the parameters need updating to recognize the knowledge gained from investigation of derailment causes, engineering analysis, and changes in terminology. Therefore, this notice proposes several changes to track surface requirements to better address current knowledge of track/vehicle interaction.

This notice proposes that the parameter referring to the rate of runoff at the end of a track raise and the parameter for deviation from uniform profile should both remain unchanged. The profile parameter is conservative for single occurrences on both rails and less conservative for repeated perturbations.

In the 1982 revisions to the Track Safety Standards, the requirement for maintenance of curve records, including degree of curvature and the amount of elevation designated in curves was removed. Since that time, the term ''designated elevation'' has been controversial and difficult to apply. This notice proposes to remove that term from the revised table.

This notice also proposes to revise the way the Track Safety Standards address transition spirals. For many curves, especially in the lower track classes, track maintenance personnel often differ as to the locations where spirals begin and end, as well as to the measured runoff rate. In view of the somewhat subjective nature of the concept of uniform runoff in spirals, the proposed changes in this notice use a different approach from runoff or ''variation in crosslevel in spirals'' and incorporate this parameter into another parameter.

In the present track surface table, the maximum variation in crosslevel in spirals could exceed that allowed on tangents and in the full body of curves over the same distance. The mechanism for derailment in the body of the curve is the same as in the spiral. This notice proposes that the differences in crosslevel in spirals be included in one parameter to simplify the table and correct the discrepancy that currently exists. This notice also proposes that the existing parameters referring to ''deviation from designated elevation'' and ''variation in crosslevel'' in spirals are unnecessary, provided spiral variations in crosslevel are included in the ''warp'' parameter. The ''warp'' parameter is measured by determining the difference in crosslevel between two points less than 62-feet apart.

While the difference in crosslevel parameter (warp) addresses the majority of situations where wheel climb or rock off can occur, three footnotes are added to the table to address specific situations.

Footnote 1 addresses the present practice on some railroads to design a greater runoff of elevation in spirals due to physical restrictions on the length of spirals. Spiral runoff in new construction must be designed and maintained within the limits shown in the table for difference in crosslevel.

Footnote 2 is included to address the known derailment cause where a warp occurs in conjunction with an amount of curve elevation that approaches the maximum typically in use. When a vehicle is in an unbalanced condition on this curve elevation and encounters a warp condition, the vehicle is subjected to wheel/rail forces that could result in wheel climb.

Footnote 3 is included to address the harmonic rock off problem of which the railroad industry has been aware for many years. Under repeated warp conditions, the vehicle can experience an increase in side-to-side rocking that may result in wheel climb in curves or center plate separation on tangents.

Section 213.109—Crossties

This notice proposes to amend this section to include several recommendations made by the Track Working Group and adopted by the RSAC. After reviewing FRA's Accident/Incident data base, the group concluded that wide gage resulting from defective crossties continues to be the single largest causal factor associated with track-caused reportable derailments.

Gage widening forces applied to the track structure from the movement of rolling stock tend to increase as track curvature increases. Therefore, this notice proposes to increase the number of effective crossties required under subsection (c) for turnouts and curved track with over two degrees of curvature. The purpose of this proposed requirement is to strengthen the track structure to enable it to better resist such forces.

In Class 1 track, the required number of crossties in any 39-foot segment of track would increase from five to six; in Class 2 track, from eight to nine; in Class 3 track, from eight to 10; and in Classes 4 and 5 track, from 12 to 14. These changes are proposed to become effective 2 years after the effective date of the final rule.

Under subsection (d), this notice proposes an optional requirement for the number and placement of crossties near rail joints in Classes 3 through 5 track. The existing requirement calls for one crosstie within a specified distance from the rail joint location, while the proposed optional requirement allows two crossties, one on each side of the joint, within a specified distance from the rail joint location. FRA previously examined both standards under various static loading conditions. The results indicated that the proposed optional requirement provides equal or better joint support than the present requirement.

This notice also proposes to add a new subsection (e) to address track constructed without conventional crossties, such as concrete-slab track. The existing standards do not address this type of construction in which the running rails are secured through fixation to another structural member. The proposed addition addresses this type of track construction by requiring railroads to maintain gage, surface, and alignment to the standards specified in subsections (b)(1) (i), (ii), and (iii).

Section 213.113—Defective Rails

This notice proposes several substantive changes to this section which reflect the results of FRA's on-going rail integrity research program. The results indicate the need to revise the remedial action tables and specifications to more adequately address the risks of rail failure, reserving the most restrictive actions on limiting operating speed for those rail defects which are large enough to present a risk of service failure.

Because ''zero'' percent entries serve no useful purpose, they should be dropped from the remedial action tables. Similarly, ''100'' percent of rail head cross-sectional area is not a meaningful dividing point for transverse defects. The proposed revisions to the remedial action table for transverse defects places a lower limit of five percent of the rail head cross-sectional area. If a transverse defect is reported to be less than five percent, no remedial action would be required under the revised standards. Defects reported less than five percent are not consistently found during rail breaking programs and

therefore defect determination within this size range is not always reliable. Furthermore, if the determination is reliable, defect growth to service failure size within the newly established testing frequency under § 213.237 is highly unlikely. The proposed revisions to the remedial action table for transverse defects also establishes one or more mid-range defect sizes, between five percent and 100 percent, each of which will require specific remedial actions.

In the proposed revised remedial action table, all longitudinal defects are combined within one group subject to identical remedial actions based on their reported size. These types of longitudinal defects all share similar growth rates and the same remedial actions are appropriate to each type. The lower limit of ''0'' inches has been eliminated and the size divisions have been revised upward slightly to reflect FRA's research findings which indicate that this class of rail defect has a relatively slow growth rate.

The ''0'' inch lower limit has been eliminated also for bolt hole cracks and broken bases. The proposed revision also includes minor changes in the size divisions for bolt hole cracks, as well as changes in the required remedial action for broken bases less than 6 inches and damaged rail.

This notice also proposes to add ''Flattened Rail'' to the rail defect table. Although it is not a condition shown to affect the structural integrity of the rail section, it can result in less-than-desirable dynamic vehicle responses in the higher speed ranges. The flattened rail condition is identified in the table, as well as in the definition portion of subsection (b), as being ⅜″ or more in depth and 8″ or more in length.

The Track Working Group discussed at length a ''break out in rail head'', but was unable to agree on a standard definition. The RSAC therefore recommends that the industry continue to be guided by FRA's current interpretation that a break out in the rail head consists of a piece physically separated from the parent rail.

This notice also proposes to make several substantive revisions to the remedial actions specified under ''Notes'' in subsection (a)(2) of this section. A new note ''A2'' has been added to address the mid-range transverse defect sizes which have been added to the table. This remedial action allows for train operations to continue at a maximum of 10 m.p.h. for up to 24 hours, following a visual inspection by a person designated under § 213.7 of this part.

Note ''B'', which currently does not define a limiting speed, would be changed to limit speed to 30 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower.

Notes ''C'', ''D'', and ''H'' have been revised to limit the operating speed, following the application of angle bars, to 50 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower. Presently, the standards limit speed to 60 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower.

A second paragraph in Note ''C,'' the remedial action which applies specifically to detail fractures, engine burn fractures, and defective welds, proposes a significant change to the current standards. This revision addresses defects which are discovered in Classes 3 through 5 track during an internal rail inspection required under § 213.237, and whose size is determined not to be in excess of 25 percent of the rail head cross-sectional area. For these specific defects, a track owner may operate for up to four days at a speed limited to 50 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower. If the defective rail is not removed or a permanent repair made within four days of discovery, the speed shall be limited to 30 m.p.h. until joint bars are applied.

Under the existing standards, these types of defects, predominant on heavy utilization trackage, would require a 30 m.p.h. restriction until angle bars are applied. Practice within the industry today is to operate the rail test vehicle until the number of defects found exceeds the railroad's ability to effect immediate repairs. At that time the rail test vehicle is shut down for the day. The purpose of this practice is to reduce speed restrictions which not only affect the railroad's ability to move trains, but also can produce undesirable in-train forces that can lead to derailments. However, prematurely shutting down rail test car operations negate any possibility of discovering larger and more serious defects that may lie just ahead.

Furthermore, the results of FRA's research indicate that defects of this type and size range have a predictable slow growth life. Research indicates that even on the most heavily utilized trackage in use today, defects of this type and size are unlikely to grow to service failure size in four days.

Section 213.119—Continuous Welded Rail (CWR); General

This notice proposes to introduce a requirement for railroads to establish and place in effect written procedures to address CWR. These procedures must address the installation, adjustment, maintenance and inspection of CWR track, and include a formal training program for the application of these procedures. The procedures, including a program for training, must be submitted to FRA within six months following the effective date of this rule. Although many railroads already have in effect a CWR program, FRA will review each submitted set of procedures for compliance with the individual requirements of the proposed regulation.

Within the last decade, through the determined efforts of researchers from industry and government, along with experience gained from accident investigators and track maintenance people, the railroad industry has gained a better comprehension of the mechanics of laterally unstable CWR track. As a result, the industry has identified maintenance procedures that are critical to maintaining CWR track stability.

The proposed requirements do not detail how each procedure is to be carried out. Rather, they identify the basic safety issues and permit railroads to develop and implement their own procedures to address those issues, provided the procedures are consistent with current research results as well as findings from practical experience documented in recent years. The procedures should be clear, concise, and easy to understand by maintenance-of-way employees. A comprehensive training program must be in place for the application of these procedures.

The proposed regulation requires the designation of a ''desired rail installation temperature range'' for the geographic area in which the CWR is located. By definition contained in the proposed regulation, this is the rail temperature range at which forces in CWR should not cause a track buckle in extreme heat, or a pull-apart during cold weather. Current general practice within the industry, based to a large extent on research findings, is to establish a ''desired rail installation temperature range'' which is considerably higher than the annual mean temperature for the geographic area in which the CWR is located. The proposed regulation provides railroads with flexibility to establish the ''desired rail installation temperature range'' based on the characteristics of the specific territory

involved and the historical knowledge acquired through the application of past procedures.

When CWR is installed and anchored/fastened at the ''desired rail installation temperature range,'' it is considered to be in its initial ''stress-free'' state, where the net longitudinal force is equal to zero. Research discloses that many factors, some of which are unavoidable, like dynamics of train operation, the necessary lining and surfacing of the track structure, and performing rail repairs all contribute to a gradual lowering over time of the initial rail installation temperature range which increases the potential for track buckling. This phenomenon substantiates the need to install and anchor/fasten CWR at a relatively high rail installation temperature range.

Maintenance of the ''desired rail installation temperature range'' is critical to ensuring CWR stability. Therefore, the procedures for installation, adjustment, effecting rail repairs, and repairing track buckles or pull-aparts must compare the existing rail temperature with the ''desired rail installation temperature range'' for the area concerned.

The procedures also must address several other topics, such as rail anchoring, controlling train speed when CWR track has been disturbed, ballast re-consolidation, inspections, and recordkeeping for the installation of CWR and rail repairs that do not conform to the railroad written procedures. A track owner may update or modify CWR procedures as necessary, upon notification to FRA of those changes.

Development of individual CWR programs could prove burdensome for many small railroads. As recommended by the Track Working Group, FRA will work with the American Short Line Railroad Association (ASLRA) to develop a generic set of CWR procedures to apply to low speed/low tonnage Class 2 and Class 3 railroad operations.

Section 213.121—Rail Joints

Under existing subsection (a), the phrase ''proper design and dimension'' has often been interpreted to prohibit the use of any joint bar on a rail section for which it was not specifically designed. This interpretation does not consider the fact that certain joint bars are interchangeable between different rail sections. Therefore, this notice proposes to change the word ''proper'' to ''structurally sound'' in subsection (a).

In subsection (b), this notice proposes to add the modifier ''excessive'' in front of the phrase ''vertical movement.'' The existing language in this subsection implies that no vertical movement of either rail could be allowed when all bolts are tight. This interpretation is too strict. FRA's Enforcement Manual suggests that FRA inspectors evaluate excessive vertical movement when determining compliance with this paragraph. This proposal will make the rule conform to sound practices.

This notice proposes to extend to Class 2 track the prohibition of torch cutting bolt holes in rail. The reference to angle bars has been removed and is to be covered in the proposed new subsection (h) which restricts the practice of re-configuring joint bars. Joint bars for older rail sections are becoming increasingly difficult to find and are no longer being manufactured. Therefore, the new subsection (h) prohibits the re-configuration of joint bars in Classes 3 through 5 track, but not in Classes 1 and 2 track.

Section 213.122—Torch Cut Rail

This proposed new section addresses the proper handling of rails cut by the use of a torch. The practice of torch-cutting rail at one time was commonplace on railroads, but was discontinued in higher speed track several years ago when better saws were developed and railroads discovered that rails that have been torch-cut have a greater tendency to develop fractures. Today, on track Classes 3 and above, the practice is used almost exclusively for temporary emergency repairs that are then quickly replaced with new rail. The purpose of this section is to outlaw the practice of torch cutting rails, except for emergency repairs, on all track in classes above Class 2. Trains speed for track that has been torch cut for emergency repairs made after the effective date of this rule must be reduced to the maximum allowable speed for Class 2 until the torch cut rail is replaced.

The proposed section also provides railroads with guidance for eliminating old torch cut rail in track Classes 3 through 5. The industry believes no torch cuts exist in Class 6 track. Torch cuts in Class 5 track must be eliminated within a year of the effective date of this rule, while torch cuts in Class 4 track must be removed within two years. Within one year of the effective date of this rule, railroads must inventory existing torch cuts in any Class 3 track over which regularly scheduled passenger trains operate. Those torch cuts found and inventoried will be ''grandfathered in.'' Any torch cuts that are found on such track after the expiration of one year and that are not inventoried will be limited immediately to Class 2 speed and removed within 30 days of discovery. If a railroad chooses to upgrade a segment of track from Classes 1 or 2 to Class 3, and regularly scheduled passenger trains operate over that track, the railroad must remove any torch cuts before the speeds can be increased beyond the maximum allowable for Class 2 track. If a railroad chooses to upgrade a segment of track from any class of track to Class 4 or 5, it must remove all torch cuts.

Section 213.123—Tie Plates

This notice proposes to add a new subsection (b) to this section which reads, ''In Classes 3 through 5 track, no metal object which causes a concentrated load by solely supporting a rail shall be allowed between the base of rail and the bearing surface of the tie plate.'' Similar wording for this paragraph was originally recommended to the RSAC by FRA's Technical Resolution Committee.

The specific reference to ''metal object'' is intended to include only those items of track material which pose the greatest potential for broken base rails such as track spikes, rail anchors, and shoulders of tie plates. The phrase ''causes a concentrated load by solely supporting a rail'' further clarifies the intent of the regulation to apply only in those instances where there is clear physical evidence that the metal object is placing substantial load on the rail base, as indicated by lack of load on adjacent ties.

Section 213.127—Rail Fastening Systems

This notice proposes to change the title of this section from ''Rail fastenings'' to ''Rail fastening systems'' and to reduce the language of the regulation to one sentence which reads ''Track shall be fastened by a system of components which effectively maintains gage within the limits prescribed in § 213.53(b).''

The change to ''rail fastening systems'' more adequately addresses the many individual components of modern-day elastic fastening systems, such as pads, insulator clips, and shoulder inserts. The failure of certain critical components within the system could adversely affect the ability of the individual fastener to provide adequate gage restraint. The revised language of the regulation provides for an evaluation of all components within the system, if necessary, in order to evaluate whether they are affording effective gage restraint.

The RSAC considers the current reference to qualified Federal or State

track inspectors and the definition of a qualified State track inspector to be redundant, given the adoption of Part 212. Therefore, this notice proposes to delete the phrase ''qualified Federal or State track inspector,'' as well as the last sentence of the current section which contains the definition of a qualified state track inspector.

Section 213.133—Turnouts and Track Crossings Generally

This notice proposes to retain the language of subsection (a) which reads, ''In turnouts and track crossings, the fastenings must be intact and maintained so as to keep the components securely in place.'' The AAR proposed to revise the language to say, ''* * * the fastenings must be maintained for the safe passage of trains.'' The AAR contended that turnout and track crossings are designed with a high degree of redundancy, making it unnecessary for each fastening to be intact to maintain safety. However, the RSAC recommends that the regulations allow track inspectors discretion to evaluate immediate circumstances in determining what level of remedial action is necessary for loose or missing fastenings. RSAC recommends that inspectors be provided specific guidance about interpreting this provision, such as the guidance contained in technical bulletin T–95–09 recently issued by FRA.

This notice proposes to change subsection (b) to reflect proposals presented by the BMWE and by the AAR and FRA. The RSAC recommends that rail anchoring requirements be extended to include Class 3 trackage and that ''rail anchors'' be changed to ''rail anchoring '' so that rail anchoring would include elastic rail fasteners.

Section 213.135—Switches

This notice proposes to revise subsection (b) to consider the existence of reinforcing bars or straps on switch points where joint bars cannot be applied to certain rail defects, as required under § 213.113(a)(2), because of the physical configuration of the switch. In these instances, remedial action B will govern, and a person designated under § 213.7(a), who has at least one year of supervisory experience in track maintenance, will limit train speed to that not exceeding 30 m.p.h. or the maximum allowable under § 213.9(a) for the appropriate class of track, whichever is lower. Of course, the person may exercise the options under § 213.5(a) when appropriate.

The RSAC did not recommend specific dimensions for determining when switch points are ''unusually chipped or worn,'' as provided for in subsection (h). FRA stated that its Accident/Incident data base indicates that worn or broken switch points are the largest single cause of derailments within the general category of ''Frogs, Switches, and Appliances.'' However, the AAR contended that developing meaningful numbers for these measurements would be a difficult task because most of these derailments are related also to other causal factors such as wheel flange condition, truck stiffness, and train handling characteristics. This notice, therefore, proposes to retain the current wording in subsection (h), allowing qualified individuals to evaluate immediate circumstances to determine when switch points are ''unusually chipped or worn.''

A new subsection (i) is proposed by this notice to read, ''Tongue and plain mate switches, which by design exceed Class 1 and excepted track maximum gage limits, are permitted in Class 1 and excepted track.'' This new subsection provides an exemption for this item of specialized track work, primarily used in pavement or street railroads, which by design does not conform to the maximum gage limits prescribed for Class 1 and excepted track.

Section 213.137—Frogs

This notice proposes to add a new subsection (d) to this section, which reads, ''Where frogs are designed as flange-bearing, flangeway depth may be less than that shown for Class 1 if operated at Class 1 speeds.'' This subsection provides an exemption for an item of specialized track work which by design does not conform to the minimum flangeway depth requirements prescribed in subsection (a) of this section.

Section 213.143—Frog Guard Rails and Guard Faces; Gage

To facilitate an easier understanding of the requirements contained in this section, this notice proposes to add a diagram to illustrate the method for measuring guard check gage and guard face gage. The proposal contains no substantive changes to this section.

Section 213.205—Derails

This notice proposes to add language to this section designed to ensure that derails are maintained to function properly. The RSAC recommended these changes as additional safety features for train crews, as well as railroad employees working on and around tracks.

Section 213.233—Track Inspections

This notice proposes several changes to subsection (b). The five m.p.h. restriction over highway crossings is eliminated to permit safe operation of vehicles through highway traffic. However, the subsection would still require an inspector to perform an adequate inspection, regardless of how the inspector operates over the crossing. Also, the word ''switch'' is replaced by the word ''turnout'' to clarify the track device originally intended to be addressed in the regulation.

The Track Working Group considered advising the RSAC to recommend specific speed restrictions for inspection vehicles. However, after several lengthy discussions, the group suggested instead that this subsection provide the individual inspector with sole discretion in determining vehicle speed based on track conditions, inspection requirements, and other circumstances that may vary from day to day and location to location. The group also suggested the insertion of a footnote at the end of this section which indicates this discretion is not limited by any other part of this section, and is extended to determine sight distance (''visibility remains unobstructed by any cause'') which is referenced in subsections (b) (1) and (2) of this section.

The existing language under subsection (b) does not specify how many tracks may be inspected in one pass of an inspection vehicle in multiple track territory. FRA has never issued interpretive language regarding this issue, opting to judge the overall effectiveness of the inspection program rather than the specific manner in which it was conducted. This notice proposes to establish some guidelines for hy-rail inspections conducted in multiple track territory.

As a result, subsection (b) contains additional language specifying the number of additional tracks that can be inspected, depending on whether one or two qualified individuals are in the vehicle, and depending on the distance between adjacent tracks measured between track centerlines. Inspectors may inspect multiple tracks from hy-rail vehicles only if their view of the tracks inspected is unobstructed by tunnels, differences in ground level, or any other circumstance that would prevent an unobstructed inspection of all the tracks they are inspecting. The revised subsection also requires railroad to traverse each main track bi-weekly and each siding monthly, and to so note on the appropriate track inspection records.

With respect to the inspection frequency required in subsection (c), neither the Track Working Group nor the RSAC could reach agreement in determining a frequency requirement that would be based on speed, tonnage, or track usage. Therefore, this notice does not propose to change the language in this subsection.

Section 213.235—Switch and Track Crossing Inspections

This notice proposes to change subsection (a) by adding the word ''turnout'' after the word ''switch'' to clarify the track device and the intent of the requirement which is to inspect the entire turnout. The word ''switch'' is retained to include switch point derails or any other device which is not considered a full turnout.

A second sentence is added to subsection (a) which reads, ''Each switch in Classes 3 through 5 track that is held in position only by the operating mechanism and one connecting rod shall be operated to all of its positions during one inspection in every 3-month period.'' The nature of this type of switch requires a thorough inspection of the critical parts, some of which are non-redundant. This is best accomplished by operating the switch mechanism to allow for a better inspection of these components. The phrase ''all positions'' is intended to cover slip switches and lap switches.

In subsection (b), the word ''turnout'' is added after the word ''switch'' for the same reasons explained above.

Section 213.237—Inspection of Rail

Under existing subsection (a), the Track Safety Standards require Classes 4 and 5 track, as well as Class 3 track over which passenger trains operate, to be tested annually for internal rail defects. This requirement was established at a time when main line freight traffic was considerably lighter than it is today. At the time the original standards were drafted, test frequencies generally equated to intervals between 15 and 20 million gross tons (MGTs), although there existed some track that carried 40 MGTs or more in one year. As a matter of practice, railroads generally test more often than presently required under the standards, with intervals between tests typically ranging from 20 to 30 MGTs. These typical intervals define a good baseline for generally accepted maintenance practices, and the industry's rail quality managers consider these limits as points of departure for adjustment of test schedules to account for the effects of specific track characteristics, maintenance, traffic, and weather.

This notice proposes to leave unchanged the present annual test requirement for Classes 4 and 5 track and Class 3 track over which passenger trains operate, based on risk factors associated with freight train speeds and passenger train operations. However, with the high utilization trackage that now exists on Class 1 freight railroads, the original requirement based solely on the passage of time, without regard to tonnage, is no longer adequate.

Selecting an appropriate frequency of rail testing is a complex and somewhat controversial task involving many different factors including temperature differential, curvature, residual stresses, rail sections, and cumulative tonnage. Taking into consideration all of the above factors, FRA's research suggests that 40 MGTs is the maximum tonnage that can be hauled between rail tests and still allow a safe window of opportunity for detection of an internal rail flaw before it propagates in size to service failure. This notice proposes that intervals be set at once per year or 40 MGTs, whichever is shorter, for Classes 4 and 5 track and for Class 3 track over which passenger trains operate.

This notice also proposes that Class 3 trackage not supporting passenger traffic be subject to testing for internal rail defects. FRA's Accident/Incident data point to a need for inclusion of all Class 3 trackage in a railroad's rail testing program. Therefore, this notice proposes to add a requirement that Class 3 track over which passenger trains do not operate be tested once a year or once very 30 MGTs, whichever is longer.

This notice proposes the limit of once a year or 30 MGTs because a more frequent testing cycle or a cycle identical to that proposed for Classes 4 and 5 track would be too burdensome for the industry. The proposed limits are designed to give short line railroads and low tonnage branch lines some relief from the introduction of a new regulatory requirement and still reduce the present risks associated with not testing Class 3 track at all.

This notice also proposes the addition of subsections (d) and (e). Subsection (d) addresses the case where a valid search for internal rail defects could not be made because of rail surface conditions. Several types of technologies are presently employed to search for internal rail defects, some with varying means of displaying and monitoring search signals. Therefore, this notice does not define a non-test in absolute technical terms, but rather leaves this judgment to the rail test equipment operator who is uniquely qualified on that equipment.

Proposed subsection (e) specifies the options available to a railroad following a non-test due to rail surface conditions. These options must be exercised prior to the expiration of time or tonnage limits specified in paragraph (a) of this section.

Section 213.239—Special Inspections

The RSAC recommended no change to this section, and likewise, FRA proposes no change to the language in the regulation. However, FRA believes that an explanation of agency policy interpreting the section is in order. Although the section contains a sample list of surprise events that occur in nature, FRA does not view this provision as limited to only the occurrences listed or to only natural disasters. ''Other occurrences'' also includes such natural phenomena as temperature extremes, as well as unexpected events that are human-made, e.g., a vehicle that falls on the tracks from an overhead bridge, a water main break that floods a track roadbed, or terrorist activity that damages track. This interpretation is not new; FRA has always viewed this section to encompass sudden events of all kinds that affect the safety and integrity of track.

Section 213.241—Inspection Records

This notice proposes to change the requirement that railroads retain a record of each track inspection at division headquarters for at least one year. When this provision in subsection (b) was first written, railroads maintained many division headquarters throughout their systems, making it relatively convenient for railroads to maintain inspection records at these locations. Over the years, however, railroads consolidated many of their headquarters, often naming only a few locations as ''division headquarters.'' FRA has contended that maintaining inspection records in only a few locations over a system that may include thousands of miles of track was not in keeping with the spirit of the regulation. Railroads have argued, on the other hand, that compelling them to maintain headquarters for no other purpose than to store records was a burdensome requirement.

The proposed change would allow railroads to designate a location within 100 miles of each state where records can be viewed by FRA track inspectors following 10 days notice by FRA. The provision does not require the railroads to maintain the records at these designated locations, only to be able to provide viewing of them at the locations within 10 days after notification. The

proposal stipulates locations within 100 miles of each state, rather than locations in each state, to accommodate those railroads whose operations may cross a state's line by only a few miles. In those cases, the railroad could designate a location in a neighboring state, provided the location is within 100 miles of that state's border.

A change to subsection (c) requires a track owner to record any locations where a proper rail inspection cannot be performed because of rail surface conditions. A new provision at § 213.237(d) specifies that if rail surface conditions prohibit the railroad from conducting a proper search for rail defects, a test of that rail does not fulfill the requirements of § 213.237(a) which requires a search for internal defects at specific intervals. The new language in subsection (c) of this section requires a recordkeeping of those instances.

This notice also proposes to add a provision for maintaining and retrieving electronic records of track inspections. Patterned after an experimental program successfully tried by the former Atchison Topeka & Santa Fe Railroad with oversight by FRA, the provision in subsection (e) allows each railroad to design its own electronic system as long as the system meets the specified criteria to safeguard the integrity and authenticity of each record. The provision also requires that railroads make available paper copies of electronic records when needed by FRA or by railroad track inspectors.

Subpart G—High Speed Track Standards

Section 213.301—Scope of Subpart.

Subpart G applies to track required to support the passage of qualified flanged wheel, high speed passenger and freight equipment in specific speed ranges. The terms ''qualified'' and ''flanged wheel'' are necessary to limit the scope of this subpart to track that is designed for equipment which has been ''qualified'' to operate on that track within acceptable safety limits. For high speeds, the track and the vehicles operated on the track must be considered as an integral system. This subpart does not apply to technology such as ''Maglev'' that does not use flanged wheel equipment.

Section 213.303—Responsibility for Compliance

Only two response options are available under this paragraph. Track owners who know or have notice of non-compliance with this subpart may either bring the track into compliance with the subpart or halt operations over that track. This section does not offer the railroad the option of operating under this subpart with the supervision of a qualified person, as in the standards for track Classes 1 through 5. Such an option would permit too much opportunity for disaster from human error. Under this subpart, if a track does not comply with the requirements of its class, it must be repaired immediately or train speeds must be reduced to the maximum speed for the track class with which the track complies. It may be necessary on occasion for the track owner to reduce the class of track to Class 5 or below. When this occurs, the requirements for the lower classes (1–5) will apply.

Section 213.305—Designation of Qualified Individuals; General Qualifications

Work on or about a track structure supporting qualified high speed passenger trains demands the highest awareness of employees about the need to perform work properly.

A person may be qualified to perform restorations and renewals under this subpart in three ways. First, the person may combine five or more years of supervisory experience in track maintenance for track Class 4 or higher and the successful completion of a course offered by the employer or by a college level engineering program, supplemented by special on-the-job training. Second, a person may be qualified by a combination of at least one year of supervisory experience in track maintenance of Class 4 or higher, 80 hours of specialized training or in a college level program, supplemented with on-the-job training. Under the third option, a railroad employee with at least two years of experience in maintenance of high speed track can achieve qualification status by completing 120 hours of specialized training in maintenance of high speed track, provided by the employer or by a college level engineering program, supplemented by special on-the-job training.

Similarly, a person may be qualified to perform track inspections in Classes 6, 7, 8 and 9 by attaining five or more years of experience in inspection in track Class 4 or higher and by completing a course taught by the employer or by a college level engineering program, supplemented by special on-the-job training. Or, the person may be qualified by attaining a combination of at least one year of experience in track inspection in Class 4 and higher and by successfully completing 80 hours of specialized training in the inspection of high speed track provided by the employer or by a college level engineering program, supplemented with on-the-job training. Finally, a person may be qualified by attaining two years of experience in track maintenance in Class 4 and above and by successfully completing 120 hours of specialized training in the inspection of high speed track provided by the employer or by a college level engineering program, supplemented by special on-the-job training provided by the employer with emphasis on the inspection of high speed track. The third option is intended to provide a way for employees with two years of experience in the maintenance of high speed track to gain the necessary training to be qualified to inspect track.

For both categories of qualifications, the person must have experience in Class 4 track or above. To properly maintain and inspect Class 4 track or higher requires a level of knowledge of track geometry and track conditions that are not as readily obtained at lower classes. Persons who are qualified for high speed track must know how to work, maintain, and measure high quality track. Experience in Class 4 track is established as a lower limit to provide a pool of candidates, that may be drawn from freight railroads, who would provide the necessary experience on well-maintained track.

This section also includes specific requirements for qualifications of persons charged with maintaining and inspecting CWR. Training of employees in CWR procedures is essential for high speed operations. Each person inspecting and maintaining CWR must understand how CWR behaves and how to prevent track buckles and other adverse track reactions to thermal and dynamic loading.

Section 213.307—Class of Track: Operating Speed Limits

For several years, passenger service on the Northeast Corridor has operated at 125 m.p.h. under conditional waivers granted by FRA. Amtrak has established specific procedures for this category of speed from which the railroad industry has accumulated valuable knowledge about track behavior in this speed range. The speed of 125 m.p.h. is the natural boundary for the maximum allowable operating speed for Class 7 track. Because trainsets have operated in this country at speeds up to 160 m.p.h. for periods of several months under waivers for testing and evaluation, the maximum limit of 160 m.p.h. is established for Class 8. In the next several years, certain operations, like the Florida Overland Express, may achieve speeds of up to 200 m.p.h. Class 9 track is established

for this possibility. The exceptions for the maximum allowable operating speeds for each class of track parallels the standards for the lower classes, except that a speed of 10 m.p.h over the maximum intended operating speeds is permitted during the qualification phase per Section 213.345.

Although high speed rail is most often considered in terms of passenger travel, non-passenger high speed train service (e.g., the mail trains operated by Amtrak on the Northeast Corridor) is also a possibility. All equipment, whether used for passenger or freight, must demonstrate the same vehicle/track performance and be qualified on the high speed track. Hazardous materials, except for limited and small quantities, may not move in bulk on trains operated at high speeds. The limitations noted are similar to those involved in commercial passenger and freight air travel.

Section 213.309—Restoration or Renewal of Track Under Traffic Conditions

This section addresses two elements of concern: (1) that the stability of the track structure not be significantly degraded and (2) that roadway worker safety not be compromised. For restoration under traffic conditions, this section allows only track maintenance that does not affect the safe passage of trains and involves the replacement of worn, broken, or missing components or fastenings or minor levels of spot surfacing.

Section 213.311—Measuring Track Under Load; Section 213.317 Exemptions; Section 213.319 Drainage; Section 213.321 Vegetation

These sections are identical to the corresponding sections in the standards for track Classes 1 though 5.

Section 213.323—Track Gage

This section introduces limits for change in gage. Analysis has shown that an abrupt change in gage can produce significant wheel forces at high speeds. The minimum and maximum limits for gage values Classes 6, 7, 8 and 9 were set to minimize the onset of truck hunting.

Section 213.327—Alignment

Uniformity is established by averaging the offset values for nine points centered around each point along the track at a spacing specified in the table. Uniformity defined in this way applies anywhere—curves, tangent segments, and spirals. Analysis has shown that points in transition areas such as around the ''point-of-spiral-to-curve'' can be included in this averaging technique. No distinction is made as to where the uniform calculation takes place. Tangent, curve, and spiral transitions have historically been difficult to determine in the field. The use of the uniformity filter obviates the need to make determinations based on the identification of these transitions.

This section provides three chord lengths for different types of vehicle/track interaction modes. Chords of 31-, 62-, and 124-foot lengths provide control of single and multiple defects in the wavelength bands most likely to affect vehicle dynamics and ride quality.

The 62-foot chord was selected because of its proximity to the truck center spacing of most high speed passenger vehicles. In phase carbody resonance modes such as bounce, roll and sway are most affected by track anomalies with a wavelength that is near the truck center spacing. Control of track geometry limits based on the 62-foot chord will help reduce the magnitude of such carbody motion. This chord also is predominantly used for track Classes 1 through 5 and is familiar to track inspection and maintenance personnel.

The 31-foot chord controls short wavelength defects that can result in high wheel forces over a short portion of track. These forces may not produce excessive carbody motion, yet their action on the wheels and truck may cause derailment. Most foreign high speed railroads use a 10-meter chord which is approximately equal in length to the 31-foot chord required in this section.

To control longer wavelengths, most foreign high speed railroads use a 30-or 40-meter chord. The 124-foot chord, which is approximately equal to a 40-meter chord, provides a means to locate and measure longer wavelength track anomalies. These long-wavelength anomalies provide dynamic input to the high speed rail vehicles and can excite carbody resonance modes at high speeds. Excessive carbody motion can lead to poor carbody accelerations and wheel/rail forces, and in the extreme, may also cause derailment.

Addition of this chord length allows measurement of anomalies with wavelengths up to 300 feet. The Japanese National Railway adopted a 40-meter chord after recent speed increases on its Tokaido line. Research and testing indicated a stronger correlation between carbody motion and track geometry limits based on 40-meter mid-chord offsets.

Section 213.329—Curves, Elevation and Speed Limitations

The determination of the maximum speed that a vehicle may operate around a curve is based on the degree of curvature, actual elevation, and amount of unbalanced elevation where the actual elevation and curvature are derived by a moving average technique. This approach is as valid in the high speed regime as in the lower classes. The moving average technique recognizes the steady state (one or two second duration) nature of the Vmax formula.

The maximum operating speed for each curve is determined by the Vmax formula:

$$V_{max} = \sqrt{\frac{E_a + E_u}{0.0007D}}$$

Where

V_{max} = Maximum allowable operating speed (miles per hour).

E_a = Actual elevation of the outside rail (inches).

E_u = Unbalance elevation or cant deficiency

D = Degree of curvature (degrees).

While the cant deficiency proposed in Classes 1 through 5 is three or four inches, cant deficiencies proposed for qualified high speed train are considerably higher. FRA has granted waivers for up to nine inches for revenue service and up to twelve inches for testing for qualified equipment. Higher cant deficiencies are allowed for high speed trains that may include tilting systems. The qualification testing will ensure that the vehicle will not exceed the vehicle/track safety performance limits set forth in this subpart when operating at these higher cant deficiencies.

In order to qualify the vehicle at higher cant deficiencies, the railroad must provide technical testing information using the same procedures that have been used in past years for waivers for higher cant deficiencies. This procedure is commonly called the ''static lean test'' where the vehicle is elevated on one side and wheel loads are measured and the roll angle is determined. Based on acceptable testing information and other technical submissions, FRA will approve the higher cant deficiencies for the specific vehicle type. Equipment that has already been qualified under conditional approval by FRA shall be considered as having complied with this qualification process.

The maximum crosslevel on the outside of a curve is established at seven inches. Elevation in excess of that

amount presents a safety consideration for freight trains with high centers of gravity, operating at lower speeds in the curve.

Section 213.331—Track Surface

The chord lengths in the table are selected for the same reasons discussed in § 213.327 (alignment). The multiple chords measure different surface anomaly wavelengths.

The surface table addresses both single and multiple events. Studies have shown that the smaller limits are necessary when surface anomalies repeat themselves three more times over the specified chord length. The parameter commonly called ''warp,'' the difference in crosslevel between any two points, does not require a specific limit for repeated warp conditions at high speeds.

Section 213.333—Automated Vehicle Inspection Systems

Technology is available today to perform three essential tasks necessary for high speed train operation: track geometry measuring systems (TGMS), gage restraint measuring systems (GRMS), and vehicle/track performance measuring systems. The vehicle/track performance systems encompass both acceleration and wheel force measurements. These functions may be combined in the same or different vehicles. This section provides for the implementation of these systems.

The GRMS is primarily used on timber-tied track of certain freight railroads, to evaluate the effectiveness, on a continuous basis, of rail/tie fastening systems. This section requires the use of GRMS in Classes 8 and 9 to measure the gage restraint of the track, including the strength of the ties and the ability of the fastenings to maintain gage. Specified safety limits were established after testing on the Northeast Corridor where the track is predominately concrete-tied with timber tie turnouts. GRMS on concrete ties is effective in identifying defective ties and conditions with missing fasteners or a relaxation of toe load of gage-side rail fasteners. GRMS is required in Classes 8 and 9 to measure the resistance of the track to forces generated by wheel flanging in the gaging space. The use of the GRMS is necessary to insure sufficient gage restraint at the gage limits set to control truck hunting.

Railroads that operate trains at speeds above 110 mph universally employ automatic track geometry measuring systems to generate data to point out train safety hazards in the track structure. Reliance on only visual inspections to locate small track irregularities is difficult. In France, track geometry measuring vehicles are operated quarterly over high speed lines for the purpose of collecting track maintenance data. Track safety inspections are based on the exercise of an instrumented vehicle drawn from the high speed fleet. The French National Railroad (SNCF), exhibits confidence in relying on truck and carbody performance specifications to guarantee safe behavior at the wheel/rail interface and this initiative has been proven in service.

This section requires vehicle/track measurements to be made by truck frame accelerometers and carbody accelerometers, and by instrumented wheelsets to measure wheel/rail forces. Functional truck side and carbody accelerometers are required in at least two vehicles in each train in Classes 8 and 9. The track owner is required to have in effect written procedures for the notification of track forces when the devices indicate a possible track-related condition. An instrumented car in Classes 7, 8 and 9, or a portable device that monitors on-board instrumentation on trains, must be operated at the revenue speed profile at the specified frequency to monitor carbody and truck frame accelerations to ensure that the vehicle/track performance limits contained in this section are not exceeded.

For Classes 8 and 9, a car equipped with instrumented wheelsets must be operated annually to ensure that the wheel/rail force safety limits are not exceeded.

The safety limits contained in the Vehicle/Track Interaction Performance Limits table were derived from technical literature, years of research, experience by foreign railroads, and computer simulation and validation. They must not be exceeded either during the qualification phase required under § 213.345 or in the periodic measurement of accelerations and wheel/rail forces required in this section.

The minimum vertical wheel load safety limit is 10 percent of the static vertical wheel load. The static vertical wheel load is defined as the load that the wheel would carry while stationary on level track. This safety criteria assures that no excessive wheel unloading is experienced by any wheel on the operating vehicle. Significant wheel unloading greatly increases the risk of derailment in the dynamic environment of a vehicle traveling at high speed.

The ratio of the lateral force that any wheel exerts on an individual rail to the vertical force exerted by the same wheel on the rail (L/V ratio) is limited by the Nadal formula. The limit on any wheel's L/V ratio ensures that the risk of a wheel climb derailment is minimized. The wheel flange angle δ referenced in the formula should correspond to actual measurements of wheel flange angle as provided by the requirements of the vehicle qualification testing specified in § 213.345.

The net axle lateral force exerted by any axle on the track should not exceed 50 percent of the static vertical load exerted by the same axle. This safety criteria ensures that no excessive track panel shift or misalignment is produced by the moving vehicle. For vehicles operating at high speeds, track panel shift can produce unsafe carbody and/or truck motion and, in the extreme, can cause derailment.

The ratio of the lateral forces that the wheels on one side of any truck exert on an individual rail to the vertical forces exerted by the same wheels on that rail must not exceed 0.60. This limit ensures that the risk of a rail rollover derailment is minimized.

The lateral carbody peak-to-peak acceleration (defined by the algebraic difference between the two extreme values of measured acceleration within a one-second duration) is limited to 0.5g. Carbody lateral accelerations above this limit reflect a very poor ride quality and a degraded track and/or vehicle condition.

The vertical carbody peak-to-peak acceleration (defined by the algebraic difference between the two extreme values of measured acceleration within a one-second duration) is limited to 0.6g. Carbody vertical accelerations above this limit also reflect a poor ride quality and a degraded track and/or vehicle condition.

The Root Mean Square (RMS) of the lateral truck acceleration for any two-second duration is limited to 0.4 g. This safety limit ensures that no sustained truck hunting is experienced by the moving vehicle. Sustained truck hunting produces undesirable ride quality and significantly increases the risk of derailment. The RMS of the lateral truck acceleration must be calculated over a two-second window from which the mean value of the acceleration has been removed.

The vertical truck zero-to-peak acceleration is limited to 5.0 g. Exceeding this safety limit can indicate undesirable short wavelength track anomalies.

Ultimately, vehicle/track interaction safety is assured by controlling wheel/rail forces to safe limits. Appropriate limits for track geometry and vehicle response acceleration provide strong

indications of the likely wheel/forces which would be produced by operating trains. Use of an instrumented wheelset also provides a level of safety assurance for new and unusual vehicle designs that differ from the conventional vehicle dynamic models that were used to develop the track geometry and vehicle/track interaction limits.

Section 213.335—Crossties

Various types of crossties may be installed in high speed track provided that the ties maintain the proper gage, surface and alignment. Slab track (track imbedded in concrete) or other construction may also be used if the construction complies with the requirements of this section. Because of the wide use of concrete ties in high speed track throughout the world, this section establishes safety requirements for concrete ties.

The requirements for ties in this subpart differ from those in the corresponding section for crossties in Classes 1 through 5. For non-concrete-tied construction, the requirements for ties parallel those of the lower standards except that permissive lateral movement of tie plates is set at 3⁄8 inch instead of 1⁄2 inch and a requirement for rail holding spikes is added.

For concrete-tied track, effective ties must not exhibit the known failure modes listed. These failure modes were derived largely from experience in the Northeast Corridor. The number and distribution requirements of both non-concrete ties and concrete ties is more stringent than the requirements for the lower classes. For example, 14 effective concrete crossties in Class 6 and 16 effective concrete ties are required in Classes 7, 8 and 9 in each 39-foot segment of track. For both concrete and timber construction, a minimum number of non-defective ties is specified on each side of a defective tie.

Section 213.337—Defective Rails

The requirements for the identification of rail flaws and appropriate remedial action are valid in high speed track classes as well as the lower track classes. This section is unchanged from the standards for the lower classes except that language references to specific lower classes are deleted as unnecessary. If severe rail surface conditions (such as corrugation, shelling, spalling, and checking) occur in high speed lines, they likely will lead to degraded vehicle/track performance and require the track owner to reduce speeds. Therefore, remedial requirements for these conditions are the same as those for the lower track classes. The flattened rail head is especially important to identify in high speed track because of the adverse effect on track geometry cause by the short anomaly of a depression in the rail.

Section 213.339—Inspection of Rail in Service

A continuous search for internal rail defects must be made of all rail in track in track Classes 6, 7, 8 and 9 at a frequency of twice per year. This requirement is consistent with the frequency used on Amtrak's Northeast Corridor (essentially, Class 6 and 7) and as well as the approach used in France which inspects rails are in the track twice a year. The same requirements for Classes 1 through 5 apply if a rail flaw inspection cannot be made over a particular segment of track.

Section 213.341—Initial Inspection of New Rail and Welds

This section provides for the initial inspection of new rail, either at the mill or within 90 days after installation, and for the initial inspection of new welds made in new or used rail. It also provides for alternatives for these inspections. Compliance with the initial inspection of new rail and welds may be demonstrated by in-service inspection, mill inspections, welding plant inspections, and inspections of field welds.

Section 213.343—Continuous Welded Rail (CWR)

As with CWR for the lower classes of track, FRA will review the railroad's written procedures for the installation, adjustment, maintenance and inspection of CWR, and training for the application of these procedures.

Section 213.345—Vehicle Qualification Testing

All rolling stock, both passenger and freight, must be qualified for operation for its intended class. This section ''grandfathers'' equipment that has already operated in the specified classes. Rolling stock operating in Class 6 within one year prior to the promulgation of this rule shall be considered as qualified. Vehicles operating at Class 7 speeds prior to the promulgation of the rule under conditional waivers are qualified for Class 7. This includes equipment that is presently operating on the Northeast Corridor at Class 7 speeds.

The qualification testing will ensure that the equipment will not exceed the vehicle/track performance limits specified in § 213.333 at any speed less than 10 m.p.h. above the proposed maximum operating speed. Testing at a maximum speed at least 10 m.p.h. above the proposed operating speed is required. The test report must include the design flange angle of the equipment that will be used for the determination of the lateral to vertical wheel load safety limit for the vehicle/track performance measurements required in § 213.333(k).

Subsection (d) requires the operator to submit an analysis and description of the signal system and operating practices to govern operations in Classes 7, 8 and 9. This submission will include a statement of sufficiency in these areas for the class of operation intended. Based on test results and submissions, FRA will approve a maximum train speed and value of cant deficiency for revenue service.

Section 213.347—Automotive or Railroad Crossings at Grade

There are no highway or railroad grade crossings on the Amtrak route between Washington, DC and New York City. Much of this line is operated by revenue passenger trains at 125 m.p.h. (Class 7 speeds). Highway crossings and railroad crossings at grade (diamonds) may not be present in Class 8 and 9 track.

Technology currently is being developed that would prevent inappropriate intrusion of vehicles onto the railroad rights-of-way. This technology involves the use of barrier systems with intrusion detection and train stop, as well as advance warning systems. Because the technology is under development, it would be premature to include specific requirements for barrier systems and related technology in this section. However, the railroad is required to submit for approval a description of the crossing warning system for each crossing.

Section 213.349—Rail End Mismatch

Vertical or horizontal mismatch of rails at joints must be less than one-eighth of an inch for Classes 6 through 9. A more restrictive criteria is not necessary and would be impractical.

Section 213.351—Rail Joints

This section is less permissive than its counterpart for the lower speed classes. Fracture mechanics tests and analyses demonstrate that there is no place in the high speed train operating regime for defective joint bars. The propagation rate of a crack large enough to be visible in a joint bar is unpredictable. Once a joint bar has ruptured, its companion joint bar is immediately in danger of overload. Upon discovery of a defective joint bars, the track owner must reduce the track class at the location of the

defective bar and proceed according to the requirements of Subpart D.

Section 213.353—Turnouts and Crossovers, Generally

The requirements in this section are similar to those in the lower classes. Fastenings must be intact and maintained so as to keep the components securely in place. Each switch, frog, and guard rail must be free of obstructions that may interfere with the passage of wheels. Rail anchoring is required to restrain rail movement affecting the position of switch points and frogs.

Experience in this country with the maintenance of turnouts and crossovers in high speed territories is limited. The use of conventional switch and frog components in present-day 125 m.p.h. track can produce harsh vehicle response which, while not necessarily unsafe, is likely to be less and less welcome in the future, particularly at train speeds above 125 m.p.h.

Worldwide, the trend for turnouts and crossovers in high speed lines is toward reliance on long switch points and moveable point frogs. Amtrak has some limited experience with these features at fairly high train speeds, and the western coal railroads have a great deal of experience, especially with moveable point frogs, with turnout component performance in low speed, cumulative tonnage conditions. This section requires that the track owner, intending to operate trains at high speeds, to develop a turnout and inspection handbook for the instruction of employees involved in this work. Requirements for switches, frogs, and spring frogs that are present in the standards for the lower classes are not specifically listed, but will be addressed in the railroad's Guidebook.

The purpose of such a document is to encourage formal consideration of problems associated with inspection and maintenance of these track features and to establish a consistent system approach to the performance of related work.

Section 213.355—Frog Guard Rails and Guard Faces; Gage

The most restrictive practical measurements for these important parameters are included. The limits for guard check and guard face gage are set at a limit that permits minimal wear.

Section 213.357—Derails

Because it is essential that railroad rolling stock be prevented from fouling the track in front of a high speed train, this section presents strict requirements for derails to be fully functional and linked to the signal systems.

Section 213.359—Track Stiffness

Track must have sufficient vertical strength and lateral strength to withstand the maximum loads generated at maximum permissible train speeds, cant deficiency and lateral or vertical defects so that the track will return to a configuration in compliance with the track performance and geometry requirements of this subpart. It is imperative that the track structure is structurally qualified to accept the loads without unacceptable deformation.

Section 213.361—Right-Of-Way

This section requires the track owner to submit a barrier plan, termed a ''right-of-way plan,'' to FRA for approval. The plan will include, at a minimum, provisions in areas of demonstrated need to address the prevention of vandalism by trespassers and intrusion of vehicles from adjacent rights of way. A particular form of vandalism, the launching of objects from overhead bridges or structures, is specifically listed.

Section 213.365—Visual Inspections

Visual inspections are considered to be an important component of the railroad's overall inspection program. The section largely parallels the requirements for the lower classes. The inspection requirements are twice weekly for Classes 6, 7 and 8 and three times per week for Class 9. Turnouts and crossovers must be inspected in accordance with the Guidebook required under § 213.353. The practice in France of operating a train at reduced speeds following a period with no train traffic is adopted in this section.

Section 213.367—Special Inspections

The requirements of this section are the same as those for the lower track classes except that the occurrence of temperature extremes is specifically listed as an event that requires a track inspection.

Section 213.369—Inspection Records

The requirements of this section are the same as those for the lower track classes.

Environmental Impact

FRA has evaluated these proposed regulations in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and related directives. These proposed regulations meet the criteria that establish this as a non-major action for environmental purposes.

Appendix

FRA plans to revise Appendix B to Part 213—Schedule of Civil Penalties, to include penalties for violations of the provisions of Subpart G and to be included in the final rule. Because such penalty schedules are statements of policy, notice and comment are not required prior to their issuance. See 5 U.S.C. 553(b)(3)(A). Nevertheless, interested parties are welcome to submit their views on what penalties may be appropriate.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures. It is considered to be significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034, February 26, 1979) because of substantial public interest and safety implications. FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of the rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, N.W., Seventh Floor, Washington, D.C. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at the Office Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Mail Stop 10, Washington, D.C. 20590.

FRA's economic analysis showed that there was less certainty about the economic impact of the proposed rule than would be the case for a rule developed within an agency, rather than through the RSAC process. The proposed standards were developed by consensus among members of a Working Group of the Rail Safety Advisory Committee (RSAC). The RSAC process affects the shape of the rule very dramatically, because the process relies on a consensus to adopt recommendations. It also permits input on variables for which little data exists. Therefore, neither the underlying rule nor this analysis could assume the shape they would have had the more traditional rulemaking process been followed. Further, the RSAC process resulted in many unrelated changes to individual sections, which were best analyzed section-by-section. In its conclusion, the FRA finds that the net effect is an increase in safety and an increase in the burden on the railroads,

but that the burden on the railroads is not likely to be as great as the benefit, although there was no way to quantify the magnitude on the net benefit.

The Track Working Group formed, reached a consensus on internal working procedures, and addressed the issues. Several issues were delegated to task groups, which are subgroups of the working group. The procedure remained the same. The task groups could make no recommendations until they had a consensus. The working group would not adopt any recommendation, even if a result of a consensus in the task group, until there was a consensus in the working group. The full RSAC would make no recommendation to the Administrator until there was a majority consensus in the full RSAC, even if there was a consensus in the working group.

An implication of this is that no entity's representative would accept a consensus agreement, unless the entity he or she represent would be at least as well off after the agreement as it had been before. This analysis therefore uses as a fundamental assumption that there are no provisions which will impose drastic costs on any segment represented by members of the Working Group, and Pareto superiority of the proposal over the current rules. Pareto superiority implies that no party would be willing to pay to return to the current standards, although some party might be indifferent between the current standards and the proposal. There is no implication that the proposal is Pareto optimal, although Pareto optimality has not been excluded. Were the proposal Pareto optimal, there would not exist another possible set of rules which at least one party would be willing to pay to adopt, and the amount that party would be willing to pay would be sufficient, were it given to other parties, to induce them to agree to the set of rules. Nor is the proposal assumed to be optimal. Were it optimal the total net benefit would be maximized.

The guidance in E.O. 12866 is that we should select the rule with the maximum net benefit. We cannot know if we have done that here. What we know is that the proposal is closer to the optimum than the current rules. The guidance in the Regulatory Flexibility Act is that we should adopt rules which are flexible, fitting in with how businesses actually conduct operations, and being sensitive to the concerns of small businesses. Clearly the RSAC process does this.

Involvement of Small Entities

All of the small entities directly affected by this rule are short line railroads. They are represented by the American Short Line Railroad Association (ASLRA). They were members of the working group that developed this proposal, and of all of the smaller Task Groups addressing particular subsets of issues in which they were interested. They were not, of course, involved in developing those standards which would not apply to any of their members, for example the high speed track standards. The ASLRA agreed to the proposal, as did all members of the working group.

Earlier in the process, the FRA published an ANPRM that called for four workshops, held January through March 1993. The ASLRA also participated in all of those workshops.

In addition, several short line railroads participated directly in both the workshops and the Working Group. All of the individual short line railroads participating in the Working Group agreed to the proposal.

Almost every change in the proposal will enhance safety. Some provisions will reduce burdens, but in most cases the burden is increased, and almost all of the burden falls on the railroads. In those cases where the burden increased, the railroads participating in the process arranged the additional burden so that it would have the least adverse impact. Many of the newly prohibited track conditions are rare or nonexistent. The impact on small entities was considered at every step, and phase in periods were used to mitigate the effect on them when they were affected by the crosstie standard and the new gage standard for excepted track. There is no clear way to measure the net effect of the proposal, although it seems likely the net benefit will be positive. The RSAC process was intended to take rulemaking into areas where data is sparse, and the end product, as might be expected, is difficult to quantify.

Federalism Implications

This proposed rule has been analyzed according to the principles of Executive Order 12612 (''Federalism''). It has been determined that these proposed amendments to Part 213 do not have federalism implications. As noted previously, the U.S. Supreme Court, in *CSX* v. *Easterwood*, upheld Federal preemption of any state or local attempts to regulate train speed. Nothing in this notice proposes to change that relationship. Likewise, the proposed addition to Part 213's requirement for vegetation maintenance near grade crossings is not intended to preempt any similar existing state or local requirements. The provisions that require railroads seeking to operate in Classes 8 and 9 to have a program addressing vandalism and trespassing are directed only to the railroads, and not to state or local governments. If a railroad is unable to provide an adequate program to address these issues, it will not be allowed to operate at Classes 8 and 9 speeds. For these reasons, the preparation of a Federalism Assessment is not warranted.

Regulatory Flexibility Act

This notice contains a summary of an initial regulatory flexibility analysis (IRFA) as required by the provisions of the Regulatory Flexibility Act at 5 U.S.C. §§ 601–612. FRA completed an IRFA as part of an economic analysis of costs and benefits, and placed of copy of the IRFA in the docket for this proceeding.

1. Why action by the agency is being considered

The Rail Safety Enforcement and Review Act of 1992, Public Law 102–365, 106 Stat. 972 (September 3, 1992), later amended by the Federal Railroad Safety Authorization Act of 1994, Public Law 103–440, 108 Stat. 4615 (November 2, 1994), requires FRA to revise the track safety regulations contained in 49 CFR Part 213. Now codified at 49 U.S.C. § 20142, the amended statute requires:

''(a) Review of Existing Regulations.—Not later than March 3, 1993, the Secretary of Transportation shall begin a review of Department of Transportation regulations related to track safety standards. The review at least shall include an evaluation of—

(1) procedures associated with maintaining and installing continuous welded rail and its attendant structure, including cold weather installation procedures;

(2) the need for revisions to regulations on track excepted from track safety standards; and

(3) employee safety.

(b) Revision of Regulations.—Not later than September 1, 1995, the Secretary shall prescribe regulations and issue orders to revise track safety standards, considering safety information presented during the review under subsection (a) of this section and the report of the Comptroller General submitted under subsection ''(c)'' of this section.

* * * * *

(d) Identification of Internal Rail Defects.—In carrying out subsections (a) and (b), the Secretary shall consider whether or not to prescribe regulations and issue orders concerning—

(1) inspection procedures to identify internal rail defects, before they reach

imminent failure size, in rail that has significant shelling; and

(2) any specific actions that should be taken when a rail surface condition, such as shelling, prevents the identification of internal defects.''

The reasons for the actual provisions of the action considered by the agency are explained in the body of the analysis.

2. The objectives and legal basis for the proposed rule

The objective of the proposed rule is to enhance the safety of rail transportation, protecting both those traveling and working on the system, and those off the system who might be adversely affected by a rail accident. The legal basis is reflected in the response to 1. above and in the preamble.

3. A description of and an estimate of the number of small entities to which the proposed rule would apply

The proposed rule would apply to railroads. Small entities among affected railroads would all be short line railroads. There are approximately 700 short line railroads in the United Sates, but many of them are not small entities, either because they are large enterprises as railroads, or because they are operations of large entities in other industries.

4. A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record

See the Paperwork Reduction Act analysis.

5. Federal rules which may duplicate, overlap, or conflict with the proposed rule

None.

Significant alternatives:

1. Differing compliance or reporting requirements or timetables which take into account the resources available to small entities

In the two sections most likely to affect small entities, § 213.4 Excepted Track and § 213.109 Crossties, the proposal includes a two year phase-in period.

2. Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities

Although their needs were considered at every step of the process, there was no way to reduce the burden on small entities that did not apply as well to larger entities.

3. Use of performance, rather than design standards

Where possible, especially in the geometry standards, the standards were tied to performance. Although they were expressed as specifications, the underlying performance model ensures that they will have the same effect as a performance standard would. In the high speed standards, vehicle qualification is expressed strictly as a performance standard.

4. Exemption from coverage of the rule, or any part thereof, for such small entities

There was no practicable way to exclude small entities. Further, the low volume operations of the largest railroads often serve shippers which are small entities, and any additional burden on the low volume lines of large railroads would likely have adverse impacts on those small shippers.

Small Business Regulatory Enforcement Fairness Act

In 1996, Congress enacted the Small Business Regulatory Enforcement Fairness Act (SBREFA) which, in part, amended the Regulatory Flexibility Act to require Federal agencies to focus additional attention on the economic impacts of proposed rules and new final rules on small entities. The act requires agencies to consult with small businesses and with the Small Business Administration, which FRA did prior to publication of this notice.

FRA's outreach to small entities included securing the participation of several short lines and the ASLRA in workshops held under the original ANPRM. FRA also benefitted from the advice and participation of ASLRA and several short line railroads whose representatives were members of the RSAC and the Track Working Group.

FRA did not quantify the estimated annual cost to the average firm, nor compare it to average annual revenue or profits, because the relative impact of the proposed rule varies more by condition of the track owned by a railroad than by the size of the railroad. Railroads with better, safer track will face proportionally much smaller effects from the proposed rule. The average annual total cost is likely to be less than $2,000,000 per year for the entire railroad industry, with more than half of the cost borne by large railroads. The average burden per small railroad is likely therefore to be less than $1,500 per year. The burden will be greater on railroads with more track, and lower on railroads with less. FRA welcomes any additional data on this subject.

No provision included in this proposed rule will have a very adverse impact on the affected firms. A proposal which would have had a large beneficial impact, the GRMS as an alternative to the crosstie standard. (*See* previous discussion in the preamble to this notice.) Some provisions which at first impression seem to have a significant impact, such as an increase in the number of required crossties, in fact will have little impact.

For example, this proposal includes an increase in the number of crossties required on curved track. In a worst case, about 30 percent of the Class 1 track of a very small entity might not comply with the requirement for six ties per 39-foot section of rail. Of this, 80 percent would not comply with geometry standards or standards affecting effective distribution of ties, which likely would be fixed by adding enough ties to comply or exceed the proposed standard. The remaining track, about six percent of all track, would not have sufficient ties to meet the proposed standard. Some of this track would not meet the current standard. One tie per section for six percent of the track would be slightly more than eight ties per mile. At a cost of $40 per tie installed, this would mean a cost of about $320 per mile, for a worst case. A railroad with track this poor would have presented a serious safety hazard in the first place, and would not be representative. Most small railroads currently exceed the proposed standard. A more detailed description of the impact is contained in the complete IRFA, found in the docket for this proceeding.

In several places in this notice, FRA asks for additional information on benefits and costs. In the Track Working Group, and at meetings of task groups assigned to work on particular issues, FRA repeatedly asked participating parties for any data which might support the recommendations. On occasion, participants shared such data with FRA, most notably the ASLRA which conducted a survey of its members to analyze the potential impact of increasing the number of crossties required in a 39-foot segment of track. At other times, data were not shared with FRA, and the agency was unable to determine whether the information was withheld for proprietary reasons or whether it simply was not available.

While the negotiations at times may have created incentives for parties not to disclose parametric data, such as how many torch cut rails are in service (a

number which the railroads might not be able to generate if they wanted to), at other times parties were forced to reveal non-parametric data in the form of preferences. By voting to accept a provision in the proposal, often as part of a compromise with other interested parties, the parties' acceptance of a package of compromises revealed that they preferred the compromise position to a position of no compromise (the existing rule with the possibility of some other rulemaking activity). This implied that the burdens which rail management representatives accepted likely were not significant. Details of provisions that will have little or no impact may be found in the complete IRFA, found in the docket for this proceeding.

In general, the Track Working Group did not proffer many alternatives to the provisions of this proposal. In most cases, members agreed on the subject matter, but disagreed about the stringency of the standard. For example, everyone agreed that track ought to be inspected. However, the group debated about the most effective inspection intervals, and about how much track one inspector can inspect. Thus, the alternatives discussed in this context concerned greater or lesser required inspection frequencies and limitations or removal of limitations of the amount of track one inspector can inspect.

One significant alternative discussed by the group at length was the use of GRMS as an alternative to crosstie standards. (*See* more complete discussion of GRMS in other sections of this preamble and in the IRFA.)

Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
213.4 Excepted Track					
Designation of track as excepted	160 railroads	32 designations	15 minutes	8 hours	$240
Notification to FRA about removal of excepted track.	160 railroads	40 notifications	10 minutes	7 hours	210
213.5—Responsibility of track owners	620 railroads	16 notifications	8 hours	120 hours	3,600
213.7 Designation of qualified persons to supervise certain renewals and inspect track					
Designations	620 railroads	1,500 names	10 minutes	250 hours	7,500
Notification and dispatched to location.	N/A	N/A	Usual and customary procedure.	N/A2	N/A
213.17 Exemptions	620 railroads	4 petitions	24 hours	96 hours	2,880
213.57 Curves, elevation and speed limitations					
Request to FRA for approval	620 railroads	3 requests	40 hours	120 hours	3,600
Notification to FRA with written consent of other affected track owners.	620 railroads	2 notifications	45 minutes	1.5 hours	45
213.119 Continuous welded rail (CWR), general					
Written procedures	110 railroads	110 procedures	40 hrs Class I RRS 16 hrs. Class II RRs.	2,000 hours	60,000
Training Program	110 railroads	110 programs	40 hrs Class I RRs 8 hrs Class II RRs.	1,200 hours	36,000
Recordkeeping	110 railroads	4,500 records	10 minutes	750 hours	22,500
213.122 Torch cut rail	20 railroads	2,000	5 minutes	167 hours	5,010
213.233 Track inspections	620 railroads	2,500 inspections	1 minute	41.5 hours	1,079
213.237 Inspection of rail	N/A	N/A	Usual and customary procedure.	N/A	N/A

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
213.241 Inspection records	620 railroads	Varies	Varies	1,763,991 hours	52,919,730
213.303 Responsibility for Compliance	2 railroads	1 petition	8 hours	8 hours	240
213.305 Designation of qualified individuals; general qualifications.	2 railroads	150 qualifications	10 minutes	25 hours	750
213.317—Exemptions	2 railroads	1 petition	24 hours	24 hours	720
213.329 Curves, elevation and speed limitations					
FRA approval of qualified equipment and higher curving speeds.	2 railroads	1 notification	40 hours	40 hours	1,200
Written notification to FRA with written consent of other affected track owners.	2 railroads	1 notification	45 minutes	45 minutes	22.50
213.333 Automated Vehicle Inspection System					
Track Geometry Measurement System.	3 railroads	18 reports	20 hours	360 hours	9,360
Track/Vehicle Performance Measurement System.	1 railroad	1 program	8 hours	8 hours	240
Written procedures	2 railroads	13 printouts	20 hours	260 hours	7,800
copies of most recent exception printouts.					
213.339 Inspection of rail in service	N/A	N/A	Usual and customary procedure.	N/a	N/A
213.341 Initial inspection of new rail and welds					
Mill inspection	2 railroads	1 report	8 hours	8 hours	240
Welding plan inspection	2 railroads	2 reports	8 hours	16 hours	480
Inspection of field wells	2 railroads	200 records	20 minutes	67 hours	2,010
Marking of defective rail	N/A	N/A	Usual and customary procedure.	N/A	N/A
213.343 Continuous welded rail (CWR)					
-Written procedures	2 railroads	2 procedures	40 hours	80 hours	2,400
Training program	2 railroads	2 programs	40 hours	80 hours	2,400
Recordkeeping	2 railroads	200 records	10 minutes	33 hours	990
213.345 Vehicle qualification	1 railroad	1 report	16 hours	16 hours	480
213.353 Turnouts and crossovers, generally.	1 railroad	1 guidebook	40 hours	40 hours	1,200
213.361 Right of Way	1 railroad	1 plan	40 hours	40 hours	1,200
213.369 Inspection Records					
Record of inspection	2 railroads	500 records	1 minute	8 hours	208
Designation of location where record should be maintained.	2 railroads	2 designations	15 minutes	30 minutes	15
Internal defect inspections and remedial action taken.	2 railroads	50 records	5 minutes	4 hours	104

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. § 3506(c)(2)(B), the FRA solicits comments concerning: (1) whether these information collection requirements are necessary for the proper performance of the function of FRA, including whether the information has practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection requirements; (3) the quality, utility, and clarity of the information to be collected; and (4) whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Gloria Swanson at (202)632–3318.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Federal Railroad Administration, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should also send a copy of their comments to Gloria D. Swanson Eutsler, Federal Railroad Administration, RRS–211, 400 Seventh Street, S.W., Mail Stop 25, Washington, D.C. 20590.

OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of a final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

List of Subjects in 49 CFR Part 213

Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Proposed Rule

In consideration of the foregoing, FRA proposes to revise Part 213, Title 49, Code of Federal Regulations as follows:

PART 213—TRACK SAFETY STANDARDS

Subpart A—General

Sec.

Subpart B—Roadbed

Subpart C—Track Geometry

Subpart D—Track Structure

Subpart E—Track Appliances and Track-Related Devices

Subpart F—Inspection

Subpart G—Train Operations at Track Classes 6 and Higher

Authority: 49 U.S.C. 20103 and 20142; 49 CFR 1.49(m).

Subpart A—General

§ 213.1 Scope of part.

This part prescribes minimum safety requirements for railroad track that is part of the general railroad system of transportation. The requirements prescribed in this part apply to specific track conditions existing in isolation. Therefore, a combination of track conditions, none of which individually amounts to a deviation from the requirements in this part, may require remedial action to provide for safe operations over that track.

§ 213.2 Preemptive effect.

Under 49 U.S.C. 20106 (formerly § 205 of the Federal Railroad Safety Act of 1970, 45 U.S.C. 434), issuance of these regulations preempts any State law, rule, regulation, order, or standard covering the same subject matter, except a provision directed at an essentially local safety hazard that is consistent with this part and that does not impose an undue burden on interstate commerce.

§ 213.3 Application.

(a) Except as provided in paragraph (b) of this section, this part applies to all standard gage track in the general railroad system of transportation.

(b) This part does not apply to track——

(1) Located inside an installation which is not part of the general railroad system of transportation; or

(2) Used exclusively for rapid transit service in a metropolitan or suburban area.

§ 213.4 Excepted track.

A track owner may designate a segment of track as excepted track provided that——

(a) The segment is identified in the timetable, special instructions, general order, or other appropriate records which are available for inspection during regular business hours;

(b) The identified segment is not located within 30 feet of an adjacent track which can be subjected to simultaneous use at speeds in excess of 10 miles per hour;

(c) The identified segment is inspected in accordance with §§ 213.233(c) and 213.235 at the frequency specified for Class 1 track;

(d) The identified segment of track is not located on a bridge including the track approaching the bridge for 100 feet on either side, or located on a public street or highway, if railroad cars containing commodities required to be placarded by the Hazardous Materials Regulations (49 CFR Part 172), are moved over the track; and

(e) The railroad conducts operations on the identified segment under the following conditions:

(1) No train shall be operated at speeds in excess of 10 miles per hour;

(2) No occupied passenger train shall be operated;

(3) No freight train shall be operated that contains more than five cars required to be placarded by the Hazardous Materials Regulations (49 CFR Part 172); and

(4) The gage on excepted track must not be more than 4′ 10¼ inches. (This paragraph (e)(4) is effective [1 year after effective date of final rule].)

(f) A track owner must advise the appropriate FRA Regional Office at least 10 days prior to removal of a segment of track from excepted status.

§ 213.5 Responsibility of track owners.

(a) Except as provided in paragraph (b) of this section, any owner of track to which this part applies who knows or has notice that the track does not comply with the requirements of this part, shall—

(1) Bring the track into compliance;

(2) Halt operations over that track; or

(3) Operate under authority of a person designated under § 213.7(a), who has at least one year of supervisory experience in railroad track maintenance, subject to conditions set forth in this part.

(b) If an owner of track to which this part applies designates a segment of track as ''excepted track'' under the provisions of § 213.4, operations may continue over that track without complying with the provisions of subparts B, C, D, and E, unless otherwise expressly stated.

(c) If an owner of track to which this part applies assigns responsibility for the track to another person (by lease or otherwise), written notification of the assignment must be provided to the appropriate FRA Regional Office at least 30 days in advance of the assignment. The notification may be made by any party to that assignment, but must be in writing and include the following—

(1) The name and address of the track owner;

(2) The name and address of the person to whom responsibility is assigned (assignee);

(3) A statement of the exact relationship between the track owner and the assignee;

(4) A precise identification of the track;

(5) A statement as to the competence and ability of the assignee to carry out the duties of the track owner under this part; and

(6) A statement signed by the assignee acknowledging the assignment to him of responsibility for purposes of compliance with this part.

(d) The Administrator may hold the track owner or the assignee or both responsible for compliance with this part and subject to penalties under § 213.15.

(e) A common carrier by railroad which is directed by the Surface Transportation Board to provide service over the track of another railroad under 49 U.S.C. 11125 is considered the owner of that track for the purposes of the application of this part during the period the directed service order remains in effect.

§ 213.7 Designation of qualified persons to supervise certain renewals and inspect track.

(a) Each track owner to which this part applies shall designate qualified persons to supervise restorations and renewals of track under traffic conditions. Each person designated must have—

(1) At least—

(i) 1 year of supervisory experience in railroad track maintenance; or

(ii) A combination of supervisory experience in track maintenance and training from a course in track maintenance or from a college level educational program related to track maintenance;

(2) Demonstrated to the owner that he—

(i) Knows and understands the requirements of this part;

(ii) Can detect deviations from those requirements; and

(iii) Can prescribe appropriate remedial action to correct or safely compensate for those deviations; and

(3) Written authorization from the track owner to prescribe remedial actions to correct or safely compensate for deviations from the requirements in this part.

(b) Each track owner to which this part applies shall designate qualified persons to inspect track for defects. Each person designated must have —

(1) At least—

(i) 1 year of experience in railroad track inspection; or

(ii) A combination of experience in track inspection and training from a course in track inspection or from a college level educational program related to track inspection;

(2) Demonstrated to the owner that he—

(i) Knows and understands the requirements of this part;

(ii) Can detect deviations from those requirements; and

(iii) Can prescribe appropriate remedial action to correct or safely compensate for those deviations; and

(3) Written authorization from the track owner to prescribe remedial actions to correct or safely compensate for deviations from the requirements of this part, pending review by a qualified person designated under paragraph (a) of this section.

(c) With respect to designations under paragraphs (a) and (b) of this section, each track owner must maintain written records of—

(1) Each designation in effect;

(2) The basis for each designation; and

(3) Track inspections made by each designated qualified person as required by § 213.241. These records must be kept available for inspection or copying by the Federal Railroad Administration during regular business hours.

(d) Persons not fully qualified to supervise certain renewals and inspect track as outlined in paragraphs (a) and (b) of this section, but with at least one year of maintenance-of-way or signal experience, may be qualified by the track owner to pass trains over broken rails and pull aparts provided that—

(1) The person is trained, examined, and re-examined periodically not to exceed two years, on the following topics as they relate to the safe passage of trains over broken rails or pull aparts—

(i) Rail defect identification, tie condition, track surface and alignment, gage restraint, rail end mismatch, joint bars, and maximum distance between rail ends over which trains may be allowed to pass;

(ii) The purpose of the examination will be to ascertain the persons ability to effectively apply these requirements and will not be used as a disqualifier; and

(iii) A minimum of four hours will be deemed adequate for initial training.

(2) The person deems it safe and train speeds are limited to a maximum of 10 mph over the broken rail or pull apart;

(3) The person must watch all movements over the broken rail or pull apart and be prepared to stop the train if necessary; and

(4) Person(s) fully qualified under § 213.7 of this part are notified and dispatched to the location promptly for the purpose of authorizing movements and effecting temporary or permanent repairs.

§ 213.9 Classes of track: operating speed limits.

(a) Except as provided in paragraphs (b) and (c) of this section and §§ 213.57(b), 213.59(a), 213.113(a), and 213.137 (b) and (c), the following maximum allowable operating speeds apply—

MAXIMUM ALLOWABLE OPERATING SPEEDS

[In miles per hour]

Over track that meets all of the requirements prescribed in this part for	For freight trains	For passenger trains
Class 1 track	10	15
Class 2 track	25	30
Class 3 track	40	60
Class 4 track	60	80
Class 5 track	80	90

(b) If a segment of track does not meet all of the requirements for its intended class, it is reclassified to the next lowest class of track for which it does meet all of the requirements of this part. However, if the segment of track does not at least meet the requirements for Class 1 track, operations may continue at Class 1 speeds for a period of not more than 30 days without bringing the track into compliance, under the authority of a person designated under § 213.7(a), who has at least one year of supervisory experience in railroad track maintenance, after that person determines that operations may safely continue and subject to any limiting conditions specified by such person.

§ 213.11 Restoration or renewal of track under traffic conditions.

If during a period of restoration or renewal, track is under traffic conditions and does not meet all of the requirements prescribed in this part, the work on the track must be under the continuous supervision of a person designated under § 213.7(a) who has at least one year of supervisory experience in railroad track maintenance, and subject to any limiting conditions specified by such person. The term ''continuous supervision'' as used in this section means the physical presence of that person at a job site. However, since the work may be performed over a large area, it is not necessary that each phase of the work be done under the visual supervision of that person.

§ 213.13 Measuring track not under load.

When unloaded track is measured to determine compliance with requirements of this part, the amount of rail movement, if any, that occurs while the track is loaded must be added to the measurements of the unloaded track.

§ 213.15 Civil penalty.

Any person including a railroad, any manager, supervisor, official, or other employee or agent of a railroad, any owner of track on which a railroad operates, or any person held by the Federal Railroad Administrator to be responsible under § 213.5(d) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against

individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See appendix B to this part for a statement of agency civil penalty policy.

§ 213.17 Exemptions.

(a) Any owner of track to which this part applies may petition the Federal Railroad Administrator for exemption from any or all requirements prescribed in this part.

(b) Each petition for exemption under this section must be filed in the manner and contain the information required by §§ 211.7 and 211.9 of this chapter.

(c) If the Administrator finds that an exemption is in the public interest and is consistent with railroad safety, the Administrator may grant the exemption subject to any conditions the Administrator deems necessary. Notice of each exemption granted is published in the **Federal Register** together with a statement of the reasons therefore.

Subpart B—Roadbed

§ 213.31 Scope.

This subpart prescribes minimum requirements for roadbed and areas immediately adjacent to roadbed.

§ 213.33 Drainage.

Each drainage or other water carrying facility under or immediately adjacent to the roadbed must be maintained and kept free of obstruction, to accommodate expected water flow for the area concerned.

§ 213.37 Vegetation.

Vegetation on railroad property which is on or immediately adjacent to roadbed must be controlled so that it does not—

(a) Become a fire hazard to track-carrying structures;

(b) Obstruct visibility of railroad signs and signals:

(1) Along the right-of-way, and

(2) At highway-rail crossings;

(Paragraphs (b) (1) and (2) are effective Date [1 year after effective date of rule].)

(c) Interfere with railroad employees performing normal trackside duties;

(d) Prevent proper functioning of signal and communication lines; or

(e) Prevent railroad employees from visually inspecting moving equipment from their normal duty stations.

Subpart C—Track Geometry

§ 213.51 Scope.

This subpart prescribes requirements for the gage, alignment, and surface of track, and the elevation of outer rails and speed limitations for curved track.

§ 213.53 Gage.

(a) Gage is measured between the heads of the rails at right-angles to the rails in a plane five-eighths of an inch below the top of the rail head.

(b) Gage must be within the limits prescribed in the following table—

Class of track	The gage must be at least	But not more than
Class 1 track	4' 8''	4' 10''
Class 2 and 3 track	4' 8''	4' 9¾''
Class 4 and 5 track	14' 8''	4' 9½''

§ 213.55 Alignment.

Alignment may not deviate from uniformity more than the amount prescribed in the following table:

Class of track	Tangent track	Curved track	
	The deviation of the mid-offset from a 62-foot line [1] may not be more than (inches)	The deviation of the mid-ordinate from a 31-foot chord [2] may not be more than (inches)	The deviation of the mid-ordinate from a 62-foot chord [2] may not be more than (inches)
Class 1 track	5	([3])	5
Class 2 track	3	([3])	3
Class 3 track	1¾	1¼	1¾
Class 4 track	1½	1	1½
Class 5 track	¾	½	⅝

[1] The ends of the line must be at points on the gage side of the line rail, five-eighths of an inch below the top of the railhead. Either rail may be used as the line rail, however, the same rail must be used for the full length of that tangential segment of track.

[2] The ends of the chord must be at points on the gage side of the outer rail, five-eighths of an inch below the top of the railhead.

[3] N/A—Not Applicable.

§ 213.57 Curves; elevation and speed limitations.

(a) The maximum crosslevel on the outside rail of a curve may not be more than 8 inches on track Classes 1 and 2 and 7 inches on Classes 3 through 5. Except as provided in § 213.63, the outside rail of a curve may not be lower than the inside rail. (The first sentence of paragraph (a) is effective [Date 1 yr. after effective date of final rule].)

(b) The maximum allowable operating speed for each curve is determined by the following formula—

$$V_{max} = \sqrt{(E_a + 3)/0.0007D}$$

where—

V_{max}=Maximum allowable operating speed (miles per hour).

E_a=Actual elevation of the outside rail (inches).[1]

D=Degree of curvature (degrees).[2]

Table 1 of Appendix A is a table of maximum allowable operating speed computed in accordance with this

formula for various elevations and degrees of curvature.

(c) For rolling stock meeting the requirements specified in paragraph (d) of this section, the maximum operating speed for each curve may be determined by the following formula—

$$V_{max} = \sqrt{(E_a + 4)}/0.0007D$$

where—

V_{max}=Maximum allowable operating speed (miles per hour).

E_a=Actual elevation of the outside rail (inches).[1]

D=Degree of curvature (degrees).[2]

Table 2 of Appendix A is a table of maximum allowable operating speed computed in accordance with this formula for various elevations and degrees of curvature.

(d) Qualified equipment may be operated at curving speeds determined by the formula in paragraph (c) of this section, provided each specific class of equipment is approved for operation by the Federal Railroad Administration and demonstrate that—

(1) When positioned on a track with a uniform 4 inch superelevation, the roll angle between the floor of the equipment and the horizontal does not exceed 5.7 degrees; and

(2) When positioned on a track with a uniform 6 inch superelevation, no wheel of the equipment unloads to a value of 60 percent of its static value on perfectly level track, and the roll angle between the floor of the equipment and the horizontal does not exceed 8.6 degrees.

(3) The track owner must notify the Federal Railroad Administrator no less than 30 calendar days prior to the proposed implementation of the higher curving speeds allowed under the formula in paragraph (c) of this section. The notification must be in writing and shall contain, at a minimum, the following information—

(i) A complete description of the class of equipment involved, including schematic diagrams of the suspension systems and the location of the center of gravity above top of rail;

(ii) A complete description of the test procedure[3] and instrumentation used to qualify the equipment and the maximum values for wheel unloading and roll angles which were observed during testing;

(iii) Procedures or standards in effect which relate to the maintenance of the suspension system for the particular class of equipment; and

(iv) Identification of line segment on which the higher curving speeds are proposed to be implemented.

(e) In the case of a track owner, or an operator of a passenger or commuter service, who provides passenger or commuter service over trackage of more than one track owner with the same class of equipment, that person may provide written notification to the Federal Railroad Administrator with the written consent of the other affected track owners.

(f) Equipment presently operating at curving speeds allowed under the formula in paragraph (c) of this section, by reason of conditional waivers granted by the Federal Railroad Administration, shall be considered to have successfully complied with the requirements of paragraph (d) of this section.

§ 213.59 Elevation of curved track; runoff.

(a) If a curve is elevated, the full elevation must be provided throughout the curve, unless physical conditions do not permit. If elevation runoff occurs in a curve, the actual minimum elevation must be used in computing the maximum allowable operating speed for that curve under § 213.57(b).

(b) Elevation runoff must be at a uniform rate, within the limits of track surface deviation prescribed in § 213.63, and it must extend at least the full length of the spirals. If physical conditions do not permit a spiral long enough to accommodate the minimum length of runoff, part of the runoff may be on tangent track.

§ 213.63 Track surface.

Each owner of the track to which this part applies shall maintain the surface of its track within the limits prescribed in the following table:

Track surface	Class of track				
	1 (inches)	2 (inches)	3 (inches)	4 (inches)	5 (inches)
The runoff in any 31 feet of rail at the end of a raise may not be more than	3½	3	2	1½	1
The deviation from uniform profile on either rail at the mid-ordinate of a 62-foot chord may not be more than	3	2¾	2¼	2	1¼
The deviation from zero crosslevel at any point on tangent or reverse crosslevel elevation on curves may not be more than	3	2	1¾	1¼	1
The difference in crosslevel between any two points less than 62 feet apart may not be more than*[1 2]	3	2½	2	1¾	1½
*Where determined by engineering decision prior to the promulgation of this rule, due to physical restrictions on spiral length and operating practices and experience, the variation in crosslevel on spirals per 31 feet may not be more than	2	1¾	1¼	1	¾

[1] Except as limited by § 213.57(a), where the elevation at any point in a curve equals or exceeds 6 inches, the difference in crosslevel within 62 feet between that point and a point with greater elevation may not be more than 1½ inches. (Footnote 1 is effective [date 1 year after effective date of this final rule].)

[2] However, to control harmonics on Class 2 through 5 jointed track with staggered joints, the crosslevel differences shall not exceed 1¼ inches in all of six consecutive pairs of joints, as created by 7 low joints. Track with joints staggered less than 10 feet shall not be considered as having staggered joints. Joints within the 7 low joints outside of the regular joint spacing shall not be considered as joints for purposes of this footnote. (Footnote 2 is effective [date 1 year after effective date of this rule].)

[1] Actual elevation for each 155 foot track segment in the body of the curve is determined by averaging the elevation for 10 points through the segment at 15.5 foot spacing. If the curve length is less than 155 feet, average the points through the full length of the body of the curve.

[2] Degree of curvature is determined by averaging the degree of curvature over the same track segment as the elevation.

[3] The test procedure may be conducted in a test facility whereby all the wheels on one side (right or left) of the equipment are alternately raised and lowered by 4 and 6 inches and the vertical wheel loads under each wheel are measured and a level is used to record the angle through which the floor of the equipment has been rotated.

Subpart D—Track Structure

§ 213.101 Scope.

This subpart prescribes minimum requirements for ballast, crossties, track assembly fittings, and the physical conditions of rails.

§ 213.103 Ballast; general.

Unless it is otherwise structurally supported, all track must be supported by material which will—

(a) Transmit and distribute the load of the track and railroad rolling equipment to the subgrade;

(b) Restrain the track laterally, longitudinally, and vertically under dynamic loads imposed by railroad rolling equipment and thermal stress exerted by the rails;

(c) Provide adequate drainage for the track; and

(d) Maintain proper track crosslevel, surface, and alignment.

§ 213.109 Crossties.

(a) Crossties shall be made of a material to which rail can be securely fastened.

(b) Each 39 foot segment of track shall have—

(1) A sufficient number of crossties which in combination provide effective support that will—

(i) Hold gage within the limits prescribed in § 213.53(b);

(ii) Maintain surface within the limits prescribed in § 213.63; and

(iii) Maintain alignment within the limits prescribed in § 213.55.

(2) The minimum number and type of crossties specified in paragraph (c) of this section effectively distributed to support the entire segment; and

(3) At least one crosstie of the type specified in paragraph (c) of this section that is located at a joint location as specified in paragraph (d) of this section.

(c) Each 39 foot segment of track shall have the minimum number and type of crossties as indicated in the following table:

Class of track	Tangent track and curves≤2 degrees	Turnouts and curved track over 2 degrees
Class 1 track	5	6
Class 2 track	8	9
Class 3 track	8	10
Class 4 and 5 track	12	14

Crossties required shall be of the type which are not —

(1) Broken through;

(2) Split or otherwise impaired to the extent the crossties will allow the ballast to work through, or will not hold spikes or rail fasteners;

(3) So deteriorated that the tie plate or base of rail can move laterally ½ inch relative to the crossties; or

(4) Cut by the tie plate through more than 40 percent of a ties' thickness.

(d) Class 1 and Class 2 track shall have one crosstie whose centerline is within 24 inches of the rail joint location, and Classes 3 through 5 track shall have one crosstie whose centerline is within 18 inches of the rail joint location or, two crossties whose centerlines are within 24 inches either side of the rail joint location. The relative position of these ties is described in the following diagrams.

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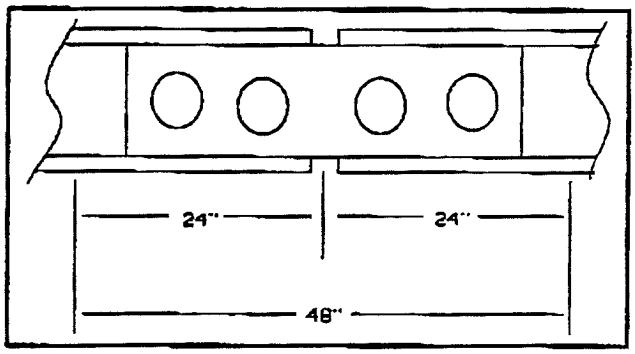
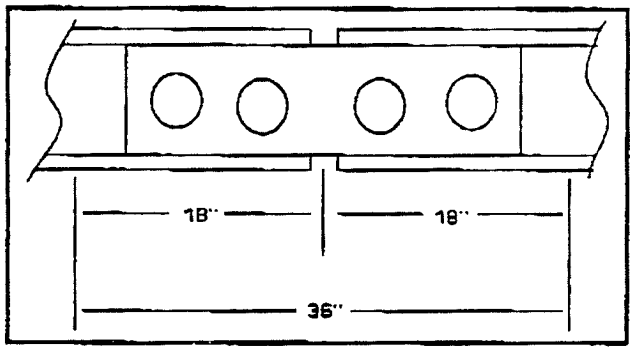
Classes 1 and 2

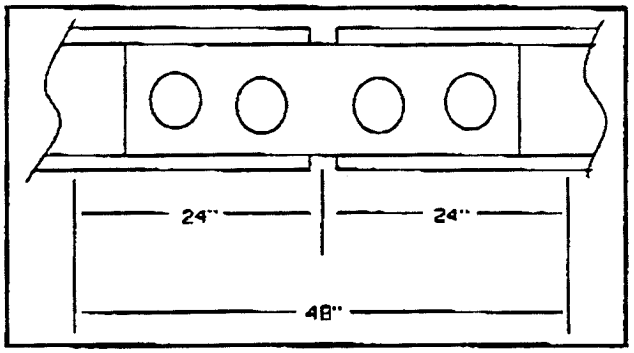


Each rail joint in Classes 1 and 2 track shall be supported by at least one crosstie specified in paragraph (c) of this section whose centerline is within 48" shown above.

Classes 3 through 5



Each rail joint in Classes 3 through 5 track shall be supported by either at least one crosstie specified in paragraph (c) of this section whose centerline is within 36" shown above, or;



Two crossties, one on each side of the rail joint, whose centerlines are within 24" of the rail joint location shown above.

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(e) For track constructed without crossties, such as slab track, track connected directly to bridge structural components and track over servicing pits, the track structure must meet the requirements of paragraphs (b)(1)(i), (ii), and (iii).

§ 213.113 Defective rails.

(a) When an owner of track to which this part applies learns, through inspection or otherwise, that a rail in that track contains any of the defects listed in the following table, a person designated under § 213.7 shall determine whether or not the track may continue in use. If he determines that the track may continue in use, operation over the defective rail is not permitted until—

(1) The rail is replaced; or

(2) The remedial action prescribed in the table is initiated —

REMEDIAL ACTION

Defect	Length of defect (inch)		Percent of rail head cross-sectional area weakened by defect		If defective rail is not replaced, take the remedial action prescribed in note
	More than	But not more than	Less than	But not less than	
Transverse fissure			70	5	B.
			100	70	A2.
				100	A.
Compound fissure			70	5	B.
			100	70	A2.
				100	A.
Detail fracture			25	5	C.
Engine burn fracture			80	25	D.
Defective weld 25			100	80	A2 or E and H.
				100	A or E and H.
Horizontal split head	1	2			H and F.
Vertical split head	2	4			I and G.
Split web	4				B.
Piped rail	(1)	(1)	(1)		A.
Head web separation					
Bolt hole crack	½	1			H and F.
	1	1½			H and G.
	1½				B.
	(1)	(1)	(1)		A.
Broken base	1	6			D.
	6				A or E and I.
Ordinary break					A or E.
Damaged rail					D.
Flattened rail	Depth ≥⅜ and .. Length ≥8				H.

(1) Break out in rail head.

Notes—

A. Assign person designated under § 213.7 to visually supervise each operation over defective rail.

A2. Assign person designated under § 213.7 to make visual inspection. After a visual inspection, that person may authorize operation to continue without continuous visual supervision at a maximum of 10 mph for up to 24 hours prior to another such visual inspection or replacement or repair of the rail.

B. Limit operating speed over defective rail to that as authorized by a person designated under § 213.7(a), who has at least one year of supervisory experience in railroad track maintenance. The operating speed cannot be over 30 mph or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower.

C. Apply joint bars bolted only through the outermost holes to defect within 20 days after it is determined to continue the track in use. In the case of Classes 3 through 5 track, limit operating speed over defective rail to 30 mph until angle bars are applied; thereafter, limit speed to 50 mph or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower. When a search for internal rail defects is conducted under § 213.237, and defects are discovered in Classes 3 through 5 which require remedial action C, the operating speed shall be limited to 50 mph, or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower, for a period not to exceed 4 days. If the defective rail has not been removed from the track or a permanent repair made within 4 days of the discovery, limit operating speed over the defective rail to 30 mph until joint bars are applied; thereafter, limit speed to 50 mph or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower.

D. Apply joint bars bolted only through the outermost holes to defect within 10 days after it is determined to continue the track in use. In the case of Classes 3 through 5 track, limit operating speed over the defective rail to 30 mph or less as authorized by a person designated under § 213.7(a), who has at least one year of supervisory experience in railroad track maintenance, until angle bars are applied; thereafter, limit speed to 50 mph or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower.

E. Apply joint bars to defect and bolt in accordance with § 213.121 (d) and (e).

F. Inspect rail 90 days after it is determined to continue the track in use.

G. Inspect rail 30 days after it is determined to continue the track in use.

H. Limit operating speed over defective rail to 50 mph or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower.

I. Limit operating speed over defective rail to 30 mph or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower.

(b) As used in this section—

(1) *Transverse Fissure* means a progressive crosswise fracture starting from a crystalline center or nucleus inside the head from which it spreads outward as a smooth, bright, or dark, round or oval surface substantially at a right angle to the length of the rail. The distinguishing features of a transverse fissure from other types of fractures or defects are the crystalline center or

nucleus and the nearly smooth surface of the development which surrounds it.

(2) *Compound Fissure* means a progressive fracture originating in a horizontal split head which turns up or down in the head of the rail as a smooth, bright, or dark surface progressing until substantially at a right angle to the length of the rail. Compound fissures require examination of both faces of the fracture to locate the horizontal split head from which they originate.

(3) *Horizontal Split Head* means a horizontal progressive defect originating inside of the rail head, usually one-quarter inch or more below the running surface and progressing horizontally in all directions, and generally accompanied by a flat spot on the running surface. The defect appears as a crack lengthwise of the rail when it reaches the side of the rail head.

(4) *Vertical Split Head* means a vertical split through or near the middle of the head, and extending into or through it. A crack or rust streak may show under the head close to the web or pieces may be split off the side of the head.

(5) *Split Web* means a lengthwise crack along the side of the web and extending into or through it.

(6) *Piped Rail* means a vertical split in a rail, usually in the web, due to failure of the shrinkage cavity in the ingot to unite in rolling.

(7) *Broken Base* means any break in the base of the rail.

(8) *Detail Fracture* means a progressive fracture originating at or near the surface of the rail head. These fractures should not be confused with transverse fissures, compound fissures, or other defects which have internal origins. Detail fractures may arise from shelly spots, head checks, or flaking.

(9) *Engine Burn Fracture* means a progressive fracture originating in spots where driving wheels have slipped on top of the rail head. In developing downward they frequently resemble the compound or even transverse fissures with which they should not be confused or classified.

(10) *Ordinary Break* means a partial or complete break in which there is no sign of a fissure, and in which none of the other defects described in this paragraph (b) are found.

(11) *Damaged Rail* means any rail broken or injured by wrecks, broken, flat, or unbalanced wheels, slipping, or similar causes.

(12) *Flattened Rail* means a short length of rail, not at a joint, which has flattened out across the width of the rail head to a depth of ‘‘ inch or more below the rest of the rail. Flattened rail occurrences have no repetitive regularity and thus do not include corrugations, and have no apparent localized cause such as a weld or engine burn. Their individual length is relatively short, as compared to a condition such as head flow on the low rail of curves.

§ 213.115 Rail end mismatch.

Any mismatch of rails at joints may not be more than that prescribed by the following table—

Class of track	Any mismatch of rails at joints may not be more than the following—	
	On the tread of the rail ends (inch)	On the gage side of the rail ends (inch)
Class 1 track	1/4	1/4
Class 2 track	1/4	3/16
Class 3 track	3/16	3/16
Class 4 and 5 track	1/8	1/8

§ 213.119 Continuous welded rail (CWR); general.

Each track owner with track constructed of CWR shall have in effect written procedures which address the installation, adjustment, maintenance and inspection of CWR, and a training program for the application of those procedures, which shall be submitted to the Federal Railroad Administration within six months following the effective date of the final rule. FRA shall review each plan for compliance with the following—

(a) Procedures for the installation and adjustment of CWR which include—

(1) Designation of a desired rail installation temperature range for the geographic area in which the CWR is located; and

(2) Destressing procedures/methods which address proper attainment of the desired rail installation temperature range when adjusting CWR.

(b) Rail anchoring or fastening requirements that will provide sufficient restraint to limit longitudinal rail and crosstie movement to the extent practical, and specifically addressing CWR rail anchoring or fastening patterns on bridges, bridge approaches, and at other locations where possible longitudinal rail and crosstie movement associated with normally expected train-induced forces, is restricted.

(c) Procedures which specifically address maintaining a desired rail installation temperature range when cutting CWR including rail repairs, in-track welding, and in conjunction with adjustments made in the area of tight track, a track buckle, or a pull-apart. Rail repair practices must take into consideration existing rail temperature so that—

(1) When rail is removed, the length installed shall be determined by taking into consideration the existing rail temperature and the desired rail installation temperature range; and

(2) Under no circumstances should rail be added when the rail temperature is below that designated by paragraph (a)(1) of this section, without provisions for later adjustment.

(d) Procedures which address the monitoring of CWR in curved track for inward shifts of alignment toward the center of the curve as a result of disturbed track.

(e) Procedures which control train speed on CWR track when—

(1) Maintenance work, track rehabilitation, track construction, or any other event occurs which disturbs the roadbed or ballast section and reduces the lateral and/or longitudinal resistance of the track; and

(2) In formulating the procedures under this paragraph (e), the track owner must—

(i) Determine the speed required, and the duration and subsequent removal of any speed restriction based on the restoration of the ballast, along with sufficient ballast re-consolidation to stabilize the track to a level that can accommodate expected train-induced forces. Ballast re-consolidation can be achieved through either the passage of train tonnage or mechanical stabilization procedures, or both; and

(ii) Take into consideration the type of crossties used.

(f) Procedures which prescribe when physical track inspections are to be performed to detect buckling prone

conditions in CWR track. At a minimum, these procedures shall address inspecting track to identify—

(1) Locations where tight or kinky rail conditions are likely to occur;

(2) Locations where track work of the nature described in paragraph (e)(1) of this section have recently been performed; and

(3) In formulating the procedures under this paragraph (f), the track owner shall—

(i) Specify the timing of the inspection; and

(ii) Specify the appropriate remedial actions to be taken when buckling prone conditions are found.

(g) The track owner shall have in effect a comprehensive training program for the application of these written CWR procedures, with provisions for periodic re-training, for those individuals designated under § 213.7 of this part as qualified to supervise the installation, adjustment, and maintenance of CWR track and to perform inspections of CWR track.

(h) The track owner shall prescribe recordkeeping requirements necessary to provide an adequate history of track constructed with CWR. At a minimum, these records must include:

(1) Rail temperature, location and date of CWR installations. This record shall be retained for at least one year; and

(2) A record of any CWR installation or maintenance work that does not conform with the written procedures. Such record must include the location of the rail and be maintained until the CWR is brought into conformance with such procedures.

(i) As used in this section—

(1) *Adjusting/Destressing* means the procedure by which a rail's temperature is re-adjusted to the desired value. It typically consists of cutting the rail and removing rail anchoring devices, which provides for the necessary expansion and contraction, and then re-assembling the track.

(2) *Buckling Incident* means the formation of a lateral mis-alignment sufficient in magnitude to constitute a deviation from the Class 1 requirements specified in § 213.55 of this part. These normally occur when rail temperatures are relatively high and are caused by high longitudinal compressive forces.

(3) *Continuous Welded Rail (CWR)* means rail that has been welded together into lengths exceeding 400 feet.

(4) *Desired Rail Installation Temperature Range* means the rail temperature range, within a specific geographical area, at which forces in CWR should not cause a track buckle in extreme heat, or a pull-apart during extreme cold weather.

(5) *Disturbed Track* means the disturbance of the roadbed or ballast section, as a result of track maintenance or any other event, which reduces the lateral and/or longitudinal resistance of the track.

(6) *Mechanical Stabilization* means a type of procedure used to restore track resistance to disturbed track following certain maintenance operations. This procedure may incorporate dynamic track stabilizers or ballast consolidators, which are units of work equipment that are used as a substitute for the stabilization action provided by the passage of tonnage trains.

(7) *Rail Anchors* means those devices which are attached to the rail and bear against the side of the crosstie to control longitudinal rail movement. Certain types of rail fasteners also act as rail anchors and control longitudinal rail movement by exerting a downward clamping force on the upper surface of the rail base.

(8) *Rail Temperature* means the temperature of the rail, measured with a rail thermometer.

(9) *Tight/Kinky Rail* means CWR which exhibits minute alignment irregularities which indicate that the rail is in a considerable amount of compression.

(10) *Train-induced Forces* means the vertical, longitudinal, and lateral dynamic forces which are generated during train movement and which can contribute to the buckling potential.

(11) *Track Lateral Resistance* means the resistance provided to the rail/crosstie structure against lateral displacement.

(12) *Track Longitudinal Resistance* means the resistance provided by the rail anchors/rail fasteners and the ballast section to the rail/crosstie structure against longitudinal displacement.

§ 213.121 Rail joints.

(a) Each rail joint, insulated joint, and compromise joint must be of a structurally sound design and dimensions for the rail on which it is applied.

(b) If a joint bar on Classes 3 through 5 track is cracked, broken, or because of wear allows excessive vertical movement of either rail when all bolts are tight, it must be replaced.

(c) If a joint bar is cracked or broken between the middle two bolt holes it must be replaced.

(d) In the case of conventional jointed track, each rail must be bolted with at least two bolts at each joint in Classes 2 through 5 track, and with at least one bolt in Class 1 track.

(e) In the case of continuous welded rail track, each rail must be bolted with at least two bolts at each joint.

(f) Each joint bar must be held in position by track bolts tightened to allow the joint bar to firmly support the abutting rail ends and to allow longitudinal movement of the rail in the joint to accommodate expansion and contraction due to temperature variations. When no-slip, joint-to-rail contact exists by design, the requirements of this paragraph do not apply. Those locations when over 400 feet in length, are considered to be continuous welded rail track and must meet all the requirements for continuous welded rail track prescribed in this part.

(g) No rail shall have a bolt hole which is torch cut or burned in Classes 2 through 5 track. (This paragraph (g) is effective [1 year after effective date of final rule].)

(h) No joint bar shall be reconfigured by torch cutting in Classes 3 through 5 track. (This paragraph (h) is effective [1 year after effective date of final rule].)

§ 213.122 Torch cut rail.

(a) Except as a temporary repair in emergency situations no rail having a torch cut end shall be used in Classes 3 through 5 track. When a rail end is torch cut in emergency situations, speed over that rail end must not exceed the maximum allowable for Class 2 track. For existing torch cut rail ends in Classes 3 through 5 track the following shall apply—

(1) Within one year of [the effective date of the final rule], all torch cut rail ends in Class 5 track must be removed;

(2) Within two years of [the effective date of the final rule], all torch cut rail ends in Class 4 track must be removed; and

(3) Within one year of [the effective date of the final rule], all torch cut rail ends in Class 3 track over which regularly scheduled passenger trains operate, must be inventoried by the track owner.

(b) Following the expiration of the time limits specified in (a)(1), (2), and (3) of this section, any torch cut rail end not removed from Classes 4 and 5 track, or any torch cut rail end not inventoried in Class 3 track over which regularly scheduled passenger trains operate, must be removed within 30 days of discovery. Speed over that rail end must not exceed the maximum allowable for Class 2 track until removed.

§ 213.123 Tie plates.

(a) In Classes 3 through 5 track where timber crossties are in use there must be

tie plates under the running rails on at least eight of any 10 consecutive ties.

(b) In Classes 3 through 5 track no metal object which causes a concentrated load by solely supporting a rail shall be allowed between the base of the rail and the bearing surface of the tie plate. (This paragraph (b) is effective 1 year after effective date of final rule].)

§ 213.127 Rail fastening systems.

Track shall be fastened by a system of components which effectively maintains gage within the limits prescribed in § 213.53(b).

§ 213.133 Turnouts and track crossings generally.

(a) In turnouts and track crossings, the fastenings must be intact and maintained so as to keep the components securely in place. Also, each switch, frog, and guard rail must be kept free of obstructions that may interfere with the passage of wheels.

(b) Classes 3 through 5 track must be equipped with rail anchoring through and on each side of track crossings and turnouts, to restrain rail movement affecting the position of switch points and frogs. (Requirement for Class 3 Track Effective [Date 1 Year after effective Date of Final Rule].)

(c) Each flangeway at turnouts and track crossings must be at least 1½ inches wide.

§ 213.135 Switches.

(a) Each stock rail must be securely seated in switch plates, but care must be used to avoid canting the rail by overtightening the rail braces.

(b) Each switch point must fit its stock rail properly, with the switch stand in either of its closed positions to allow wheels to pass the switch point. Lateral and vertical movement of a stock rail in the switch plates or of a switch plate on a tie must not adversely affect the fit of the switch point to the stock rail. Broken or cracked switch point rails will be subject to the requirements of § 213.113, except that where remedial actions C, D, or E require the use of joint bars, and joint bars cannot be placed due to the physical configuration of the switch, remedial action B will govern, taking into account any added safety provided by the presence of reinforcing bars on the switch points.

(c) Each switch must be maintained so that the outer edge of the wheel tread cannot contact the gage side of the stock rail.

(d) The heel of each switch rail must be secure and the bolts in each heel must be kept tight.

(e) Each switch stand and connecting rod must be securely fastened and operable without excessive lost motion.

(f) Each throw lever must be maintained so that it cannot be operated with the lock or keeper in place.

(g) Each switch position indicator must be clearly visible at all times.

(h) Unusually chipped or worn switch points must be repaired or replaced. Metal flow must be removed to insure proper closure.

(i) Tongue & Plain Mate switches, which by design exceed Class 1 and excepted track maximum gage limits, are permitted in Class 1 and excepted track.

§ 213.137 Frogs.

(a) The flangeway depth measured from a plane across the wheel-bearing area of a frog on Class 1 track may not be less than 1⅜ inches, or less than 1½ inches on Classes 2 through 5 track.

(b) If a frog point is chipped, broken, or worn more than five-eighths inch down and 6 inches back, operating speed over the frog may not be more than 10 miles per hour.

(c) If the tread portion of a frog casting is worn down more than three-eighths inch below the original contour, operating speed over that frog may not be more than 10 miles per hour.

(d) Where frogs are designed as flange-bearing, flangeway depth may be less than that shown for Class 1 if operated at Class 1 speeds.

§ 213.139 Spring rail frogs.

(a) The outer edge of a wheel tread may not contact the gage side of a spring wing rail.

(b) The toe of each wing rail must be solidly tamped and fully and tightly bolted.

(c) Each frog with a bolt hole defect or head-web separation must be replaced.

(d) Each spring must have a tension sufficient to hold the wing rail against the point rail.

(e) The clearance between the holddown housing and the horn may not be more than one-fourth of an inch.

§ 213.141 Self-guarded frogs.

(a) The raised guard on a self-guarded frog may not be worn more than three-eighths of an inch.

(b) If repairs are made to a self-guarded frog without removing it from service, the guarding face must be restored before rebuilding the point.

§ 213.143 Frog guard rails and guard faces; gage.

The guard check and guard face gages in frogs must be within the limits prescribed in the following table—

Class of track	Guard check gage—The distance between the gage line of a frog to the guard line [1] of its guard rail or guarding face, measured across the track at right angles to the gage line [2], may not be less than—	Guard face gage—The distance between guard lines [1], measured across the track at right angles to the gage line [2], may not be more than—
Class 1 track	4′6⅛″	4′5¼″
Class 2 track	4′6¼″	4′5⅛″
Class 3 and 4 track	4′6⅜″	4′5⅛″
Class 5 track	4′6½″	4′5″

[1] A line along that side of the flangeway which is nearer to the center of the track and at the same elevation as the gage line.

[2] A line ⅝inch below the top of the center line of the head of the running rail, or corresponding location of the tread portion of the track structure.

Subpart E—Track Appliances and Track-Related Devices

§ 213.201 Scope.

This subpart prescribes minimum requirements for certain track appliances and track-related devices.

§ 213.205 Derails.

(a) Each derail must be clearly visible.

(b) When in a locked position, a derail must be free of lost motion which would prevent it from performing its intended function.

(c) Each derail must be maintained to function as intended.

(d) Each derail must be properly installed for the rail to which it is applied. (This paragraph (d) is effective [Date 1 year after effective date of rule].)

Subpart F—Inspection

§ 213.231 Scope.

This subpart prescribes requirements for the frequency and manner of inspecting track to detect deviations from the standards prescribed in this part.

§ 213.233 Track inspections.

(a) All track must be inspected in accordance with the schedule prescribed in paragraph (c) of this section by a person designated under § 213.7.

(b) Each inspection must be made on foot or by riding over the track in a vehicle at a speed that allows the person making the inspection to visually inspect the track structure for compliance with this part. However, mechanical, electrical, and other track inspection devices may be used to supplement visual inspection. If a vehicle is used for visual inspection, the speed of the vehicle may not be more than 5 miles per hour when passing over track crossings and turnouts, otherwise, the inspection vehicle speed shall be at the sole discretion of the inspector, based on track conditions and inspection requirements. When riding over the track in a vehicle, the inspection will be subject to the following conditions—

(1) One inspector in a vehicle may inspect up to two tracks at one time provided that the inspector's visibility remains unobstructed by any cause and that the second track is not centered more than 30 feet from the track upon which the inspector is riding;

(2) Two inspectors in one vehicle may inspect up to four tracks at a time provided that the inspectors' visibility remains unobstructed by any cause and that each track being inspected is centered within 39 feet from the track upon which the inspectors are riding;

(3) Each main track is actually traversed by the vehicle or inspected on foot at least once every two weeks, and each siding is actually traversed by the vehicle or inspected on foot at least once every month. On high density commuter railroad lines where track time does not permit an on track vehicle inspection, and where track centers are 15 foot or less, the requirements of this paragraph (b)(3) will not apply; and

(4) Track inspection records must indicate which track(s) are traversed by the vehicle or inspected on foot as outlined in paragraph (b)(3) of this section.

(c) Each track inspection must be made in accordance with the following schedule —

Class of track	Type of track	Required frequency
Class 1, 2 , and 3 track	Main track and sidings	*Weekly* with at least 3 calendar days interval between inspections, or *before use,* if the track is used less than once a week, or twice *weekly* with at least 1 calendar day interval between inspections, if the track carries passenger trains or more than 10 million gross tons of traffic during the preceding calendar year.
Class 1, 2, and 3 track	Other than main track and sidings.	*Monthly* with at least 20 calendar days interval between inspections.
Class 4 and 5 track		*Twice weekly* with at least 1 calendar day interval between inspections

(d) If the person making the inspection finds a deviation from the requirements of this part, the inspector shall immediately initiate remedial action.

Note: to § 213.233 No part of this section will in any way be construed to limit the inspector's discretion as it involves inspection speed and sight distance.

§ 213.235 Switch and track crossing inspections.

(a) Except as provided in paragraph (b) of this section, each switch, turnout, and track crossing must be inspected on foot at least monthly. Each switch in Classes 3 through 5 track that is held in position only by the operating mechanism and one connecting rod shall be operated to all of its positions during one inspection in every 3 month period.

(b) In the case of track that is used less than once a month, each switch, turnout, and track crossing must be inspected on foot before it is used.

§ 213.237 Inspection of rail.

(a) In addition to the track inspections required by § 213.233, a continuous search for internal defects must be made of all rail in Classes 4 through 5 track, and Class 3 track over which passenger trains operate, at least once every 40 mgt or once a year, whichever interval is shorter. On Class 3 track over which passenger trains do not operate such a search must be made at least once every 30 mgt or once a year, whichever interval is longer. (This paragraph (a) is effective the first January 1 after [effective date of final rule].)

(b) Inspection equipment must be capable of detecting defects between joint bars, in the area enclosed by joint bars.

(c) Each defective rail must be marked with a highly visible marking on both sides of the web and base.

(d) If the person assigned to operate the rail defect detection equipment being used determines that, due to rail surface conditions, a valid search for internal defects could not be made over a particular length of track, the test on that particular length of track cannot be considered as a search for internal defects under § 213.237(a). (This paragraph (d) is not retroactive to tests performed prior to the effective date of final rule].)

(e) If a valid search for internal defects cannot be conducted for reasons described in paragraph (d) of this section, the track owner shall, before the expiration of time or tonnage limits—

(1) Conduct a valid search for internal defects;

(2) Reduce operating speed to a maximum of 25 miles per hour until

such time as a valid search for internal defects can be made; or

(3) Remove the rail from service.

§ 213.239 Special inspections.

In the event of fire, flood, severe storm, or other occurrence which might have damaged track structure, a special inspection must be made of the track involved as soon as possible after the occurrence.

§ 213.241 Inspection records.

(a) Each owner of track to which this part applies shall keep a record of each inspection required to be performed on that track under this subpart.

(b) Each record of an inspection under §§ 213.4, 213.233, and 213.235 shall be prepared on the day the inspection is made and signed by the person making the inspection. Records must specify the track inspected, date of inspection, location and nature of any deviation from the requirements of this part, and the remedial action taken by the person making the inspection. The owner shall designate the location(s) where each original record shall be maintained for at least one year after the inspection covered by the record. The owner shall also designate one location, within 100 miles of each state in which they conduct operations, where copies of records which apply to those operations are either maintained or can be viewed following 10 days notice by the Federal Railroad Administration.

(c) Rail inspection records must specify the date of inspection, the location and nature of any internal defects found, the remedial action taken and the date thereof, and the location of any intervals of track not tested per § 213.237(d). The owner shall retain a rail inspection record for at least two years after the inspection and for one year after remedial action is taken.

(d) Each owner required to keep inspection records under this section shall make those records available for inspection and copying by the Federal Railroad Administration.

(e) For purposes of compliance with the requirements of this section, an owner of track may maintain and transfer records through electronic transmission, storage, and retrieval provided that—

(1) The electronic system be designed so that the integrity of each record is maintained through appropriate levels of security such as recognition of an electronic signature, or other means, which uniquely identify the initiating person as the author of that record. No two persons shall have the same electronic identity;

(2) The electronic storage of each record must be initiated by the person making the inspection within 24 hours following the completion of that inspection;

(3) The electronic system must ensure that each record cannot be modified in any way, or replaced, once the record is transmitted and stored;

(4) Any amendment to a record must be electronically stored apart from the record which it amends. Each amendment to a record must be uniquely identified as to the person making the amendment;

(5) The electronic system must provide for the maintenance of inspection records as originally submitted without corruption or loss of data;

(6) Paper copies of electronic records and amendments to those records, that may be necessary to document compliance with this part must be made available for inspection and copying by the Federal Railroad Administration at the locations specified in paragraph (b) of this section; and

(7) Track inspection records shall be kept available to persons who performed the inspections and to persons performing subsequent inspections.

Subpart G—Train Operations at Track Classes 6 and Higher

§ 213.301 Scope of subpart.

This part applies to all track that is required to support the passage of qualified flanged wheel, high speed passenger equipment operating between 91 miles per hour and 200 miles per hour and high speed freight equipment operating between 81 miles per hour to 200 miles per hour.

§ 213.303 Responsibility for compliance.

(a) Any owner of track to which this subpart applies who knows or has notice that the track does not comply with the requirements of this subpart, shall—

(1) Bring the track into compliance; or

(2) Halt operations over that track.

(b) If an owner of track to which this subpart applies assigns responsibility for the track to another person (by lease or otherwise), notification of the assignment must be provided to the appropriate FRA Regional Office at least 30 days in advance of the assignment. The notification may be made by any party to that assignment, but must be in writing and include the following —

(1) The name and address of the track owner;

(2) The name and address of the person to whom responsibility is assigned (assignee);

(3) A statement of the exact relationship between the track owner and the assignee;

(4) A precise identification of the track;

(5) A statement as to the competence and ability of the assignee to carry out the duties of the track owner under this subpart;

(6) A statement signed by the assignee acknowledging the assignment to that person of responsibility for purposes of compliance with this subpart.

(c) The Administrator may hold the track owner or the assignee or both responsible for compliance with this subpart and subject to the penalties under § 213.313.

(d) A common carrier by railroad which is directed by the Surface Transportation Board to provide service over the track of another railroad under 49 U.S.C. 11125 is considered the owner of that track for the purposes of the application of this subpart during the period the directed service order remains in effect.

§ 213.305 Designation of qualified individuals; general qualifications.

Each track owner to which this subpart applies shall designate qualified individuals responsible for the maintenance and inspection of track in compliance with the safety requirements prescribed in this subpart. Each designated individual, including contractors who are not railroad employees, must meet the following minimum qualifications when required to:

(a) Supervise restorations and renewals of track each individual designated must have—

(1) At least;

(i) Five years of responsible supervisory experience in railroad track maintenance in track class 4 or higher and the successful completion of a course offered by the employer or by a college level engineering program, supplemented by special on the job training emphasizing the techniques to be employed in the supervision, restoration, and renewal of high speed track; or

(ii) A combination of at least one year of responsible supervisory experience in track maintenance in class 4 or higher and the successful completion of a minimum of 80 hours of specialized training in the maintenance of high speed track provided by the employer or by a college level engineering program, supplemented by special on the job training provided by the employer with emphasis on the maintenance of high speed track; or

(iii) A combination of at least two years of experience in track maintenance in track Class 4 or higher and the successful completion of a minimum of 120 hours of specialized training in the maintenance of high speed track provided by the employer or by a college level engineering program supplemented by special on the job training provided by the employer with emphasis on the maintenance of high speed track.

(2) Demonstrated to the track owner that the individual:

(i) Knows and understands the requirements of this subpart;

(ii) Can detect deviations from those requirements; and

(iii) Can prescribe appropriate remedial action to correct or safely compensate for those deviations; and

(3) Written authorization from the track owner to prescribe remedial actions to correct or safely compensate for deviations from the requirements of this subpart and successful completion of a recorded examination on this subpart as part of the qualification process.

(b) Inspect track for defects. Each individual designated must have:

(1) At least:

(i) Five years of responsible experience inspecting track in Class 4 or above and the successful completion of a course offered by the employer or by a college level engineering program, supplemented by special on the job training emphasizing the techniques to be employed in the inspection of high speed track; or

(ii) A combination of at least one year of responsible experience in track inspection in class 4 or above and the successful completion of a minimum of 80 hours of specialized training in the inspection of high speed track provided by the employer or by a college level engineering program, supplemented by special on the job training provided by the employer with emphasis on the inspection of high speed track.

(iii) A combination of at least two years of experience in track maintenance in class 4 or above and the successful completion of a minimum of 120 hours of specialized training in the inspection of high speed track provided by the employer or from a college level engineering program, supplemented by special on the job training provided by the employer with emphasis on the inspection of high speed track.

(2) Demonstrated to the track owner that the individual:

(i) Knows and understands the requirements of this subpart;

(ii) Can detect deviations from those requirements; and

(iii) Can prescribe appropriate remedial action to correct or safely compensate for those deviations; and

(3) Written authorization from the track owner to prescribe remedial actions to correct or safely compensate for deviations from the requirements in this subpart and successful completion of a recorded examination on this subpart as part of the qualification process.

(c) Individuals designated under paragraph (a) or (b) of this section that inspect continuous welded rail track (CWR) or supervise the installation, adjustment, and maintenance of CWR in accordance with the written procedures established by the track owner must have:

(1) Current qualifications under either paragraph (a) or (b) of this section;

(2) Successfully completed a training course of at least eight hours duration specifically developed for the application of written CWR procedures issued by the track owner; and

(3) Demonstrated to the track owner that the individual:

(i) Knows and understands the requirements of those written CWR procedures;

(ii) Can detect deviations from those requirements; and

(iii) Can prescribe appropriate remedial action to correct or safely compensate for those deviations; and

(4) Written authorization from the track owner to prescribe remedial actions to correct or safely compensate for deviations from the requirements in those procedures and successful completion of a recorded examination on those procedures as part of the qualification process. The recorded examination may be written, or it may be a computer file with the results of an interactive training course.

(d) With respect to designations under paragraphs (a), (b), and (c) of this section, each track owner must maintain written records of:

(1) Each designation in effect;

(2) The basis for each designation, including but not limited to:

(i) The exact nature of any training courses attended and the dates thereof;

(ii) The manner in which the track owner has determined a successful completion of that training course, including test scores or other qualifying results;

(3) Track inspections made by each individual as required by § 213.369. These records must be made available for inspection and copying by the Federal Railroad Administration during regular business hours.

(e) Persons not fully qualified to supervise certain renewals and inspect track as outlined in paragraphs (a), (b) and (c) of this section, but with at least one year of maintenance of way or signal experience, may be qualified by the track owner to pass trains over broken rails and pull aparts provided that—

(1) The person is trained, examined and re-examined periodically not to exceed two years, on the following topics as they relate to the safe passage of trains over broken rails or pull aparts—

(i) Rail defect identification, tie condition, track surface and alignment, gage restraint, rail end mismatch, joint bars, and maximum distance between rail ends over which trains may be allowed to pass;

(ii) The purpose of the examination will be to ascertain the persons ability to effectively apply these requirements and will not be used as a disqualifier; and

(iii) A minimum of four hours training will be deemed adequate for initial training.

(2) The person deems it safe and train speeds are limited to a maximum of 10 mph over the broken rail or pull apart;

(3) The person must watch all movements over the broken rail or pull apart and be prepared to stop the train if necessary; and

(4) Person(s) fully qualified under § 213.305 of this subpart are notified and dispatched to the location as soon as practicable for the purpose of authorizing movements and effectuating temporary or permanent repairs.

§ 213.307 Class of track: operating speed limits.

(a) Except as provided in paragraph (b) of this section and §§ 213.329, 213.337(a) and 213.345(c), the following maximum allowable operating speeds apply:

Over track that meets all of the requirements prescribed in this subpart for	The maximum allowable operating speed for trains [1] is
Class 6 track	110 m.p.h.
Class 7 track	125 m.p.h.
Class 8 track	160 m.p.h
Class 9 track	200 m.p.h.

[1] Freight may be transported at passenger train speeds if the following conditions are met:

(1) The vehicles utilized to carry such freight are of equal dynamic performance and have been qualified in accordance with Sections 213.345 and 213.329(d) of this subpart.

(2) The load distribution and securement in the freight vehicle will not adversely affect the dynamic performance of the vehicle. The axle loading pattern is uniform and does not exceed the passenger locomotive axle loadings utilized in passenger service operating at the same maximum speed.

(3) No carrier may accept or transport a hazardous material, as defined at 49 CFR 171.8, except as provided in Column 9A of the Hazardous Materials Table (49 CFR 172.101) for movement in the same train as a passenger-carrying vehicle or in Column 9B of the Table for movement in a train with no passenger-carrying vehicles.

(b) If a segment of track does not meet all of the requirements for its intended class, it is to be reclassified to the next lower class of track for which it does meet all of the requirements of this subpart. If a segment does not meet all of the requirements for class 6, the requirements for classes 1 through 5 apply.

§ 213.309 Restoration or renewal of track under traffic conditions.

(a) Restoration or renewal of track under traffic conditions is limited to the replacement of worn, broken, or missing components or fastenings that do not affect the safe passage of trains.

(b) The following activities are expressly prohibited under traffic conditions:

(1) Any work that interrupts rail continuity, e.g., as in joint bar replacement or rail replacement;

(2) Any work that adversely affects the lateral or vertical stability of the track with the exception of spot tamping an isolated condition where not more than 15 lineal feet of track are involved at any one time and the ambient air temperature is not above 95 degrees; and

(3) Removal and replacement of the rail fastenings on more than one tie at a time within 15 feet.

§ 213.311 Measuring track not under load.

When unloaded track is measured to determine compliance with requirements of this subpart, evidence of rail movement, if any, that occurs while the track is loaded must be added to the measurements of the unloaded track.

§ 213.317 Exemptions.

(a) Any owner of track to which this subpart applies may petition the Federal Railroad Administrator for exemption from any or all requirements prescribed in this subpart.

(b) Each petition for exemption under this section must be filed in the manner and contain the information required by §§ 211.7 and 211.9 of this chapter.

(c) If the Administrator finds that an exemption is in the public interest and is consistent with railroad safety, the Administrator may grant the exemption subject to any conditions the Administrator deems necessary. Notice of each exemption granted is published in the **Federal Register** together with a statement of the reasons therefore.

§ 213.319 Drainage.

Each drainage or other water carrying facility under or immediately adjacent to the roadbed must be maintained and kept free of obstruction, to accommodate expected water flow for the area concerned.

§ 213.321 Vegetation.

Vegetation on railroad property which is on or immediately adjacent to roadbed must be controlled so that it does not—

(a) Become a fire hazard to track-carrying structures;

(b) Obstruct visibility of railroad signs and signals along the right of way and at highway-rail crossings;

(c) Interfere with railroad employees performing normal trackside duties;

(d) Prevent proper functioning of signal and communication lines; or

(e) Prevent railroad employees from visually inspecting moving equipment from their normal duty stations.

§ 213.323 Track gage.

(a) Gage is measured between the heads of the rails at right-angles to the rails in a plane five-eighths of an inch below the top of the rail head.

(b) Gage must be within the limits prescribed in the following table:

Class of track	The gage must be at least	But not more than	The change of gage in 31 feet must not be greater than
6	4′ 8″	4′ 9¼″	½″
7	4′ 8″	4′ 9¼″	½″
8	4′ 8″	4′ 9¼″	½″
9	4′ 8¼″	4′ 9¼″	½″

§ 213.327 Alignment.

(a) Uniformity at any point along the track is established by averaging the measured mid-chord offset values for nine consecutive points centered around that point and which are spaced according to the following table:

Chord Length	Spacing
31′	7′ 9″
62′	15′ 6″
124′	31′ 0″

(b) For a single deviation, alignment may not deviate from uniformity more than the amount prescribed in the following table:

Class of track	The deviation from uniformity of the mid-chord offset for a 31-foot chord may not be more than (inches)	The deviation from uniformity of the mid-chord offset for a 62-foot chord may not be more than (inches)	The deviation from uniformity of the mid-chord offset for a 124-foot chord may not be more than (inches)
6	½	¾	1½
7	½	½	1¼
8	½	½	¾
9	½	½	½

(c) For three or more non-overlapping deviations from uniformity in track alignment occurring within a distance equal to five times the specified chord length, each of which exceeds the limits in the following table, each owner of the track to which this subpart applies shall maintain the alignment of the track within the limits prescribed for each deviation:

Class of track	The deviation from uniformity of the mid-chord offset for a 31-foot chord may not be more than (inches)	The deviation from uniformity of the mid-chord offset for a 62-foot chord may not be more than (inches)	The deviation from uniformity of the mid-chord offset for a 124-foot chord may not be more than (inches)
6	3/8	1/2	1
7	3/8	3/8	7/8
8	3/8	3/8	1/2
9	3/8	3/8	3/8

§ 213.329 Curves, elevation and speed limitations.

(a) The maximum crosslevel on the outside rail of a curve may not be more than 7 inches. The outside rail of a curve may not be more than ½ inch lower than the inside rail.

(b) The maximum allowable operating speed for each curve is determined by the following formula:

$$V_{max} = \sqrt{\frac{E_a + 3}{0.0007D}}$$

where—

V_{max} = Maximum allowable operating speed (miles per hour).

E_a = Actual elevation of the outside rail (inches).[1]

D = Degree of curvature (degrees).[2]

3 = 3 inches of unbalance.

Appendix A includes tables showing maximum allowable operating speeds computed in accordance with this formula for various elevations and degrees of curvature for track speeds greater than 90 mph.

(c) For rolling stock meeting the requirements specified in paragraph (d) of this section, the maximum operating speed for each curve may be determined by the following formula:

$$V_{max} = \sqrt{\frac{E_a + E_u}{0.0007D}}$$

where—

V_{max} = Maximum allowable operating speed (miles per hour).

E_a = Actual elevation of the outside rail (inches).[1]

D = Degree of curvature (degrees).[2]

E_u = Unbalanced elevation.

(d) Qualified equipment may be operated at curving speeds determined by the formula in paragraph (c) of this section, provided each specific class of equipment is approved for operation by the Federal Railroad Administration and demonstrate that—

(1) When positioned on a track with uniform superelevation, E_a, reflecting the intended target cant deficiency, E_u, no wheel of the equipment unloads to a value of 60 percent or less of its static value on perfectly level track and the roll angle between the floor of the vehicle and the horizontal does not exceed 5.7 degrees.

(2) When positioned on a track with a uniform 7-inch superelevation, no wheel unloads to a value less than 60 percent of its static value on perfectly level track and the angle, measured about the roll axis, between the floor of the vehicle and the horizontal does not exceed 8.6 degrees.

(e) The track owner must notify the Federal Railroad Administrator no less than thirty calendar days prior to any proposed implementation of the higher curving speeds allowed when the ''E_u'' term, above, will exceed three inches. This notification must be in writing and shall contain, at a minimum, the following information:

(1) A complete description of the class of equipment involved, including schematic diagrams of the suspension system and the location of the center of gravity above top of rail;

(2) A complete description of the test procedure [1] and instrumentation used to qualify the equipment and the maximum values for wheel unloading and roll angles which were observed during testing;

(3) Procedures or standards in effect which relate to the maintenance of the suspension system for the particular class of equipment;

(4) Identification of line segment on which the higher curving speeds are proposed to be implemented.

(f) In the case of a track owner, or an operator of a passenger or commuter service, who provides passenger or commuter service over trackage of more than one track owner with the same class of equipment, that person may provide written notification to the Federal Railroad Administrator with the written consent of the other affected track owners.[2]

§ 213.331 Track surface.

(a) For a single deviation in track surface, each owner of the track to which this subpart applies shall maintain the surface of its track within the limits prescribed in the following table:

[1] Actual elevation for each 155 foot track segment in the body of the curve is determined by averaging the elevation for 10 points through the segment at 15.5 foot spacing. If the curve length is less than 155 feet, average the points through the full length of the body of the curve. If E_u exceeds 4 inches, the Vmax formula applies to the spirals on both ends of the curve.

[2] Degree of curvature is determined by averaging the degree of curvature over the same track segment as the elevation.

[1] The test procedure may be conducted in a test facility whereby all wheels on one side (right or left) of the equipment are raised or lowered by six and then seven inches, the vertical wheel loads under each wheel are measured and a level is used to record the angle through which the floor of the vehicle has been rotated.

[2] Vehicles presently operating at curving speeds allowed under the formula in paragraph (c) of this section, by reason of conditional waivers granted by the Federal Railroad Administration, shall be considered to have successfully complied with the requirements of this section.

Track surface	Class of track			
	6 (inches)	7 (inches)	8 (inches)	9 (inches)
The deviation from uniform [1] profile on either rail at the midordinate of a 31-foot chord may not be more than	1¼	1¼	¾	½
The deviation from uniform profile on either rail at the midordinate of a 62-foot chord may not be more than	1¼	1¼	1¼	1
The deviation from uniform profile on either rail at the midordinate of a 124-foot chord may not be more than	1¾	1½	1¼	1¼
The difference in crosslevel between any two points less than 62 feet apart may not be more than	1½	1½	1½	1½

[1] Uniformity for profile is established by placing the midpoint of the specified chord at the point of maximum measurement.

(b) For three or more non-overlapping deviations in track surface occurring within a distance equal to five times the specified chord length, each of which exceeds the limits in the following table, each owner of the track to which this subpart applies shall maintain the surface of the track within the limits prescribed for each deviation:

Track surface	Class of track			9 (inches)
	6 (inches)	7 (inches)	8 (inches)	
The deviation from uniform profile on either rail at the midordinate of a 31-foot chord may not be more than	⅞	⅞	½	⅜
The deviation from uniform profile on either rail at the midordinate of a 62-foot chord may not be more than	⅞	⅞	⅞	¾
The deviation from uniform profile on either rail at the midordinate of a 124-foot chord may not be more than	1¼	1	⅞	⅞

§ 213.333 Automated vehicle inspection systems.

(a) For track class 7, a qualifying Track Geometry Measurement System (TGMS) vehicle shall be operated at least twice within 120 calendar days with not less than 30 days between inspections. For track classes 8 and 9, it shall be operated at least twice within 60 days with not less than 15 days between inspections.

(b) A qualifying TGMS must meet or exceed minimum design requirements which specify that—

(1) Track geometry measurements shall be taken no more than 3 feet away from the contact point of wheels carrying a vertical load of no less than 10,000 pounds per wheel;

(2) Track geometry measurements shall be taken and recorded on a distance-based sampling interval which shall not exceed 2 feet; and

(3) Calibration procedures and parameters are assigned to the system which assure that measured and recorded values accurately represent track conditions. Track geometry measurements recorded by the system shall not differ on repeated runs at the same site at the same speed more than ⅛ inch.

(c) A qualifying TGMS must be capable of measuring and processing the necessary track geometry parameters, at an interval of no more than every 2 feet, which enables the system to determine compliance with § 213.323, Track gage; § 213.327, Alignment; § 213.329, Curves; elevation and speed limitations; and § 213.331, Track surface.

(d) A qualifying TGMS must be capable of producing, within 24 hours of the inspection, output reports that—

(1) Provide a continuous plot, on a constant-distance axis, of all measured track geometry parameters required in paragraph (c) of this section;

(2) Provide an exception report containing a systematic listing of all track geometry conditions which constitute an exception to the class of track over the segment surveyed.

(e) The output reports required under paragraph (c) of this section must contain sufficient location identification information which enable field forces to easily locate indicated exceptions.

(f) Following a track inspection performed by a qualifying TGMS, the track owner must, within two days after the inspection, field verify and institute remedial action for all exceptions to the class of track.

(g) The track owner shall maintain for a period of one year following an inspection performed by a qualifying TGMS, copy of the plot and the exception printout for the track segment involved, and additional records which:

(1) Specify the date the inspection was made and the track segment involved; and

(2) Specify the location, remedial action taken, and the date thereof, for all listed exceptions to the class.

(h) For track classes 8 and 9, a qualifying Gage Restraint Measurement System (GRMS) shall be operated at least once annually with at least 180 days between inspections to continuously compare loaded track gage to unloaded gage under a known loading condition. The lateral capacity of the track structure must not permit a gage widening ratio (GWR) greater than 0.5 inches.

(i) A GRMS must meet or exceed minimum design requirements which specify that—

(1) Gage restraint shall be measured between the heads of the rail—

(i) At an interval less than or equal to the distance between the gage restraint supports.

(ii) Under an applied vertical load of at least 10,000 pounds per rail,

(iii) Under an applied lateral load which provides for lateral/vertical load ratio of between 0.5 and 1.25 [1], and the net lateral load, or load severity, is greater than 3000 pounds but less than 8000 pounds per rail. Load severity is defined by the formula—

$S = L - cV$

where

S = Load severity, defined as the net lateral load applied to the fastener system (pounds).

L = Actual lateral load applied (pounds).

c = Coefficient of friction between rail/tie which is assigned a nominal value of (0.4).

[1] GRMS equipment using load combinations developing L/V ratios which exceed 0.8 must be operated with caution to protect against the risk of wheel climb by the test wheelset.

V = Actual vertical load applied (pounds).

(2) The measured gage values shall be converted to a projected loaded gage 24 (PLG24) as follows:

PLG24 = UTG + A * (LTG–UTG), where—

UTG= Unloaded track gage measured at a point at least 10 feet from any lateral load application

LTG= Loaded track gage measured at the point of application of the lateral load

A = The extrapolation factor used to convert the measured loaded gage to expected loaded gage under a 24,000 pound lateral load and a 33,000 pound vertical load. for all track—

$$A = \frac{13.2}{(0.001*L\text{-}0.00035*V)} - \frac{5.32}{(0.001*L\text{-}0.00035*V)^2}$$

where

L = Actual lateral load applied (pounds).

V = Actual vertical load applied (pounds).

(3) The measured gage value shall be converted to a gage widening ratio (GWR) as follows:

$$GWR = \frac{(LTG\text{-}UTG}{L} * 16000$$

(j) A minimum of two vehicles per train operating in classes 8 and 9 shall be equipped with on-board truck side and carbody accelerometers. Each track owner shall have in effect written procedures for the notification of track forces when on-board accelerometers on trains in classes 8 and 9 indicate a possible track-related condition.

(k) For track classes 7 , 8 and 9, an instrumented car having dynamic response characteristics that are representative of other equipment assigned to service or a portable device that monitors on-board instrumentation on trains shall be operated over the track at the revenue speed profile at a frequency of at least twice within 60 days with not less than 15 days between inspections. The instrumented car or the portable device shall provide for the monitoring of vertically and laterally oriented accelerometers near the end of the vehicle at the floor level. In addition, accelerometers shall be mounted at a position directly above the axle of each truck. If the carbody lateral, carbody vertical, truck frame lateral, or truck frame vertical safety limits are exceeded, speeds will be reduced until these vehicle/performance safety limits are not exceeded.

(l) For track classes 8 and 9, an instrumented car having dynamic response characteristics that are representative of other equipment assigned to service shall be operated over the track at the revenue speed profile annually with not less than 180 days between inspections. The instrumented car shall be equipped with instrumented wheelsets to measure wheel/rail forces. If the wheel/rail force limits are exceeded, speeds will be reduced until these vehicle/performance safety limits are not exceeded.

(m) The track owner shall maintain a copy of the most recent exception printouts for the inspections required under paragraphs (k) and (l) of this section.

VEHICLE/TRACK INTERACTION PERFORMANCE LIMITS

Parameter	Safety Limit	Filter/Window	Requirements
Wheel/Rail Forces [1]:			
Minimum Vertical Wheel Load.	10 % of Static	5 ft	No wheel of the equipment shall be permitted to unload to less than 10% of the static vertical wheel load. The static vertical wheel load is defined as the load that the wheel would carry when stationary on level track. The vertical wheel load limit shall be increased by the amount of measurement error.
Wheel L/V Ratio	≤tanδ—.5 1+.5tanδ	5 ft	The ratio of the lateral force that any wheel exerts on an individual rail to the vertical force exerted by the same wheel on the rail shall be less than the safety limit calculated for the wheel's flange angle (δ).
Net Axle Lateral	50 % of static vertical axle load.	5 ft	The net lateral force exerted by any axle on the track shall not exceed 50% of the static vertical load that the axle exerts on the track.
Truck Side L/V Ratio	0.6	5 ft	The ratio of the lateral forces that the wheels on one side of any truck exert on an individual rail to the vertical forces exerted by the same wheels on that rail shall be less than 0.6.
Accelerations:			
Carbody Lateral [2]	0.5 g peak-to-peak	10 Hz 1 sec window	The peak to peak accelerations (measured as the algebraic difference between the two extreme values of measured acceleration in a one-second time period) shall not exceed 0.5g.
Carbody Vertical	0.6 g peak-to-peak	10 Hz 1 sec window	The peak to peak accelerations (measured as the algebraic difference between the two extreme values of measured acceleration in a one-second time period) shall not exceed 0.6g.
Truck Frame Lateral [3]	0.4 g RMS for 2 sec	10 Hz	Truck hunting [4] shall not develop below the maximum authorized speed.

VEHICLE/TRACK INTERACTION PERFORMANCE LIMITS—Continued

Parameter	Safety Limit	Filter/Window	Requirements
Truck Frame Vertical ...	5.0 g zero-to-peak	10 Hz	Truck frame vertical accelerations shall not exceed 5.0 g

[1] The lateral and vertical wheel forces shall be measured with instrumented wheelsets with the measurements processed through a filter having a pass band of 0 to 10 Hz.
[2] Carbody lateral and vertical accelerations shall be measured near the car ends at the floor level.
[3] Truck accelerations in the lateral direction shall be measured at a position directly above the axle. The measurements shall be processed through a filter having a pass band of 0.5 to 10 Hz.
[4] Truck hunting is defined as a sustained cyclic oscillation of the truck which is evidenced by lateral accelerations in excess of 0.4g root mean square for 2 seconds.

§ 213.335 Crossties.

(a) Crossties shall be made of a material to which rail can be securely fastened.

(b) Each 39 foot segment of track shall have—

(1) A sufficient number of crossties which in combination provide effective support that will—

(i) Hold gage within the limits prescribed in § 213.323(b);

(ii) Maintain surface within the limits prescribed in § 213.331; and

(iii) Maintain alignment within the limits prescribed in § 213.327.

(2) The minimum number and type of crossties specified in paragraph (c) of this section effectively distributed to support the entire segment; and

(3) Crossties of the type specified in paragraph (c) of this section that are (is) located at a joint location as specified in paragraph (e) of this section.

(c) For non-concrete tie construction, each 39 foot segment of class 6 track shall have fourteen crossties; classes 7, 8 and 9 shall have 18 crossties which are not—

(1) Broken through;

(2) Split or otherwise impaired to the extent the crossties will allow the ballast to work through, or will not hold spikes or rail fasteners;

(3) So deteriorated that the tie plate or base of rail can move laterally 3/8 inch relative to the crossties;

(4) Cut by the tie plate through more than 40 percent of a tie's thickness;

(5) Configured with less than 2 rail holding spikes or fasteners per tie plate; or

(6) Able, due to insufficient fastener toeload, to maintain longitudinal restraint and maintain rail hold down and gage.

(d) For concrete-tie construction, each 39 foot segment of class 6 track shall have fourteen crossties, classes 7, 8 and 9 shall have 16 crossties which are not—

(1) So deteriorated that the prestress strands are ineffective or withdrawn into the tie at one end and the tie exhibits structural cracks in the rail seat or in the gage of track;

(2) Configured with less than 2 fasteners on the same rail;

(3) So deteriorated in the vicinity of the rail fastener such that the fastener assembly may pull out or move laterally more than 3/8 inch relative to the crosstie;

(4) So deteriorated that the fastener base plate or base of rail can move laterally more than 3/8 inch relative to the crossties;

(5) So deteriorated that rail seat abrasion is sufficiently deep so as to cause loss of rail fastener toeload;

(6) Completely broken through; or

(7) Able, due to insufficient fastener toeload, to maintain longitudinal restraint and maintain rail hold down and gage.

(e) Class 6 track shall have one non-defective crosstie whose centerline is within 18 inches of the rail joint location or two crossties whose center lines are within 25 inches either side of the rail joint location. Class 7, 8, and 9 track shall have two non-defective ties within 25 inches each side of the rail joint.

(f) For track constructed without crossties, such as slab track and track connected directly to bridge structural components, the track structure must meet the requirements of paragraphs (b)(1) (i), (ii), and (iii) of this section.

(g) In classes 7, 8 and 9 there shall be at least three non-defective ties each side of a defective tie.

(h) Where timber crossties are in use there must be tie plates under the running rails on at least nine of 10 consecutive ties.

(i) No metal object which causes a concentrated load by solely supporting a rail shall be allowed between the base of the rail and the bearing surface of the tie plate.

§ 213.337 Defective rails.

(a) When an owner of track to which this part applies learns, through inspection or otherwise, that a rail in that track contains any of the defects listed in the following table, a person designated under § 213.305 shall determine whether or not the track may continue in use. If the person determines that the track may continue in use, operation over the defective rail is not permitted until —

(1) The rail is replaced; or

(2) The remedial action prescribed in the table is initiated—

REMEDIAL ACTION

Defect	Length of defect (inch)		Percent of rail head cross-sectional area weakened by defect		If defective rail is not replaced, take the remedial action prescribed in note
	More than	But not more than	Less than	But not less than	
Transverse fissure	.....	.....	70	5	B.
	.....	.....	100	70	A2.
	.....	.....	.....	100	A.
Compound fissure	.....	.....	70	5	B.
	.....	.....	100	70	A2.
	.....	.....	.....	100	A.
Detail fracture	.....	.....	25	5	C.
Engine burn fracture	.....	.....	80	25	D.

REMEDIAL ACTION—Continued

Defect	Length of defect (inch)		Percent of rail head cross-sectional area weakened by defect		If defective rail is not replaced, take the remedial action prescribed in note
	More than	But not more than	Less than	But not less than	
Defective weld			100	80	A2 and E and H.
				100	A or E and H.
Horizontal split head	1	2			H and F.
Vertical split head	2	4			I and G.
Split web	4				B.
Piped rail	(1)	(1)	(1)		A.
Head web separation					
Bolt hole crack	½	1			H and F.
	1	1½			H and G.
	1½				B.
	(1)	(1)	(1)		A.
Broken base	1	6			D.
	6				A or E and I.
Ordinary break					A or E.
Damaged rail					D.
Flattened rail	Depth≥ ⅜ and Length ≥ 8				H.

(1) Break out in rail head.

Notes:

A. Assign person designated under § 213.305 to visually supervise each operation over defective rail.

A2. Assign person designated under § 213.305 to make visual inspection. That person may authorize operation to continue without visual supervision at a maximum of 10 mph for up to 24 hours prior to another such visual inspection or replacement or repair of the rail.

B. Limit operating speed over defective rail to that as authorized by a person designated under § 213.305(a)(1)(i) or (ii). The operating speed cannot be over 30 mph.

C. Apply joint bars bolted only through the outermost holes to defect within 20 days after it is determined to continue the track in use. Limit operating speed over defective rail to 30 mph until angle bars are applied; thereafter, limit speed to 50 mph. When a search for internal rail defects is conducted under § 213.339 and defects are discovered which require remedial action C, the operating speed shall be limited to 50 mph, for a period not to exceed 4 days. If the defective rail has not been removed from the track or a permanent repair made within 4 days of the discovery, limit operating speed over the defective rail to 30 mph until joint bars are applied; thereafter, limit speed to 50 mph.

D. Apply joint bars bolted only through the outermost holes to defect within 10 days after it is determined to continue the track in use. Limit operating speed over the defective rail to 30 mph or less as authorized by a person designated under § 213.305(a)(1)(i) or (ii) until angle bars are applied; thereafter, limit speed to 50 mph.

E. Apply joint bars to defect and bolt in accordance with § 213.351(d) and (e).

F. Inspect rail 90 days after it is determined to continue the track in use.

G. Inspect rail 30 days after it is determined to continue the track in use.

H. Limit operating speed over defective rail to 50 mph.

I. Limit operating speed over defective rail to 30 mph.

(b) As used in this section—

(1) *Transverse Fissure* means a progressive crosswise fracture starting from a crystalline center or nucleus inside the head from which it spreads outward as a smooth, bright, or dark, round or oval surface substantially at a right angle to the length of the rail. The distinguishing features of a transverse fissure from other types of fractures or defects are the crystalline center or nucleus and the nearly smooth surface of the development which surrounds it.

(2) *Compound Fissure* means a progressive fracture originating in a horizontal split head which turns up or down in the head of the rail as a smooth, bright, or dark surface progressing until substantially at a right angle to the length of the rail. Compound fissures require examination of both faces of the fracture to locate the horizontal split head from which they originate.

(3) *Horizontal Split Head* means a horizontal progressive defect originating inside of the rail head, usually one-quarter inch or more below the running surface and progressing horizontally in all directions, and generally accompanied by a flat spot on the running surface. The defect appears as a crack lengthwise of the rail when it reaches the side of the rail head.

(4) *Vertical Split Head* means a vertical split through or near the middle of the head, and extending into or through it. A crack or rust streak may show under the head close to the web or pieces may be split off the side of the head.

(5) *Split Web* means a lengthwise crack along the side of the web and extending into or through it.

(6) *Piped Rail* means a vertical split in a rail, usually in the web, due to failure of the shrinkage cavity in the ingot to unite in rolling.

(7) *Broken Base* means any break in the base of the rail.

(8) *Detail Fracture* means a progressive fracture originating at or near the surface of the rail head. These fractures should not be confused with transverse fissures, compound fissures, or other defects which have internal origins. Detail fractures may arise from shelly spots, head checks, or flaking.

(9) *Engine Burn Fracture* means a progressive fracture originating in spots where driving wheels have slipped on top of the rail head. In developing downward they frequently resemble the compound or even transverse fissures with which they should not be confused or classified.

(10) *Ordinary Break* means a partial or complete break in which there is no sign of a fissure, and in which none of the other defects described in this paragraph (b) are found.

(11) *Damaged Rail* means any rail broken or injured by wrecks, broken, flat, or unbalanced wheels, slipping, or similar causes.

(12) *Flattened Rail* means a short length of rail, not a joint, which has flattened out across the width of the rail head to a depth of ⅜ inch or more below the rest of the rail. Flattened rail occurrences have no repetitive

regularity and thus do not include corrugations, and have no apparent localized cause such as a weld or engine burn. Their individual length is relatively short, as compared to a condition such as head flow on the low rail of curves.

§ 213.339 Inspection of rail in service.

(a) A continuous search for internal defects must be made of all rail in track at least twice annually with not less than 120 days between inspections.

(b) Inspection equipment must be capable of detecting defects between joint bars, in the area enclosed by joint bars.

(c) Each defective rail must be marked with a highly visible marking on both sides of the web and base.

(d) If the person assigned to operate the rail defect detection equipment being used determines that, due to rail surface conditions, a valid search for internal defects could not be made over a particular length of track, the test on that particular length of track cannot be considered as a search for internal defects under § 213.337(a).

(e) If a valid search for internal defects cannot be conducted for reasons described in paragraph (d) of this section, the track owner shall, before the expiration of time limits—

(1) Conduct a valid search for internal defects;

(2) Reduce operating speed to a maximum of 25 miles per hour until such time as a valid search for internal defects can be made; or

(3) Remove the rail from service.

§ 213.341 Initial inspection of new rail and welds.

The track owner shall provide for the initial inspection of newly manufactured rail, and for initial inspection of new welds made in either new or used rail. A track owner may demonstrate compliance with this section by providing for:

(a) In-service inspection—A scheduled periodic inspection of rail and welds that have been placed in service, if conducted in accordance with the provisions of § 213.339, and if conducted not later than 90 days after installation, shall constitute compliance with paragraphs (b) and (c) of this section;

(b) Mill inspection—A continuous inspection at the rail manufacturer's mill shall constitute compliance with the requirement for initial inspection of new rail, provided that the inspection equipment meets the applicable requirements specified in § 213.339. The track owner shall obtain a copy of the manufacturer's report of inspection and retain it as a record until the rail receives its first scheduled inspection under § 213.339;

(c) Welding plant inspection—A continuous inspection at a welding plant, if conducted in accordance with the provisions of paragraph (b) of this section, and accompanied by a plant operator's report of inspection which is retained as a record by the track owner, shall constitute compliance with the requirements for initial inspection of new rail and plant welds, or of new plant welds made in used rail; and

(d) Inspection of field welds—Initial inspection of new field welds, either those joining the ends of CWR strings or those made for isolated repairs, shall be conducted not less than one day and not more than 30 days after the welds have been made. The initial inspection may be conducted by means of portable test equipment. The track owner shall retain a record of such inspections until the welds receive their first scheduled inspection under § 213.339.

(e) Each defective rail found during inspections conducted under paragraph (a) or (d) of this section must be marked with highly visible markings on both sides of the web and base and the remedial action as appropriate under § 213.337 will apply.

§ 213.343 Continuous welded rail (CWR).

Each track owner with track constructed of CWR shall have in effect written procedures which address the installation, adjustment, maintenance and inspection of CWR, and a training program for the application of those procedures, which shall be submitted to the Federal Railroad Administration within six months following [the effective date of the final rule]. FRA shall review each plan for compliance with the following—

(a) Procedures for the installation and adjustment of CWR which include—

(1) Designation of a desired rail installation temperature range for the geographic area in which the CWR is located; and

(2) Destressing procedures/methods which address proper attainment of the desired rail installation temperature range when adjusting CWR.

(b) Rail anchoring or fastening requirements that will provide sufficient restraint to limit longitudinal rail and crosstie movement to the extent practical, and specifically addressing CWR rail anchoring or fastening patterns on bridges, bridge approaches, and at other locations where possible longitudinal rail and crosstie movement associated with normally expected train-induced forces, is restricted.

(c) Procedures which specifically address maintaining a desired rail installation temperature range when cutting CWR including rail repairs, in-track welding, and in conjunction with adjustments made in the area of tight track, a track buckle, or a pull-apart. Rail repair practices must take into consideration existing rail temperature so that—

(1) When rail is removed, the length installed shall be determined by taking into consideration the existing rail temperature and the desired rail installation temperature range; and

(2) Under no circumstances should rail be added when the rail temperature is below that designated by paragraph (a)(1) of this section, without provisions for later adjustment.

(d) Procedures which address the monitoring of CWR in curved track for inward shifts of alignment toward the center of the curve as a result of disturbed track.

(e) Procedures which control train speed on CWR track when—

(1) Maintenance work, track rehabilitation, track construction, or any other event occurs which disturbs the roadbed or ballast section and reduces the lateral and/or longitudinal resistance of the track; and

(2) In formulating the procedures under this paragraph (e), the track owner must—

(i) Determine the speed required, and the duration and subsequent removal of any speed restriction based on the restoration of the ballast, along with sufficient ballast re-consolidation to stabilize the track to a level that can accommodate expected train-induced forces. Ballast re-consolidation can be achieved through either the passage of train tonnage or mechanical stabilization procedures, or both; and

(ii) Take into consideration the type of crossties used.

(f) Procedures which prescribe when physical track inspections are to be performed to detect buckling prone conditions in CWR track. At a minimum, these procedures shall address inspecting track to identify—

(1) Locations where tight or kinky rail conditions are likely to occur;

(2) Locations where track work of the nature described in paragraph (e)(1) of this section have recently been performed; and

(3) In formulating the procedures under this paragraph (f), the track owner shall—

(i) Specify the timing of the inspection; and

(ii) Specify the appropriate remedial actions to be taken when buckling prone conditions are found.

(g) The track owner shall have in effect a comprehensive training program for the application of these written CWR procedures, with provisions for periodic re-training, for those individuals designated under § 213.305(c) of this part as qualified to supervise the installation, adjustment, and maintenance of CWR track and to perform inspections of CWR track.

(h) The track owner shall prescribe recordkeeping requirements necessary to provide an adequate history of track constructed with CWR. At a minimum, these records must include:

(1) Rail temperature, location and date of CWR installations. This record shall be retained for at least one year; and

(2) A record of any CWR installation or maintenance work that does not conform with the written procedures. Such record must include the location of the rail and be maintained until the CWR is brought into conformance with such procedures.

(i) As used in this section —

(1) *Adjusting/Destressing* means the procedure by which a rail's temperature is re-adjusted to the desired value. It typically consists of cutting the rail and removing rail anchoring devices, which provides for the necessary expansion and contraction, and then re-assembling the track.

(2) *Buckling Incident* means the formation of a lateral mis-alignment sufficient in magnitude to constitute a deviation of 5 inches measured with a 62-foot chord. These normally occur when rail temperatures are relatively high and are caused by high longitudinal compressive forces.

(3) *Continuous Welded Rail (CWR)* means rail that has been welded together into lengths exceeding 400 feet.

(4) *Desired Rail Installation Temperature Range* means the rail temperature range, within a specific geographical area, at which forces in CWR should not cause a track buckle in extreme heat, or a pull-apart during extreme cold weather.

(5) *Disturbed Track* means the disturbance of the roadbed or ballast section, as a result of track maintenance or any other event, which reduces the lateral and/or longitudinal resistance of the track.

(6) *Mechanical Stabilization* means a type of procedure used to restore track resistance to disturbed track following certain maintenance operations. This procedure may incorporate dynamic track stabilizers or ballast consolidators, which are units of work equipment that are used as a substitute for the stabilization action provided by the passage of tonnage trains.

(7) *Rail Anchors* means those devices which are attached to the rail and bear against the side of the crosstie to control longitudinal rail movement. Certain types of rail fasteners also act as rail anchors and control longitudinal rail movement by exerting a downward clamping force on the upper surface of the rail base.

(8) *Rail Temperature* means the temperature of the rail, measured with a rail thermometer.

(9) *Tight/Kinky Rail* means CWR which exhibits minute alignment irregularities which indicate that the rail is in a considerable amount of compression.

(10) *Train-induced Forces* means the vertical, longitudinal, and lateral dynamic forces which are generated during train movement and which can contribute to the buckling potential.

(11) *Track Lateral Resistance* means the resistance provided to the rail/crosstie structure against lateral displacement.

(12) *Track Longitudinal Resistance* means the resistance provided by the rail anchors/rail fasteners and the ballast section to the rail/crosstie structure against longitudinal displacement.

§ 213.345 Vehicle qualification testing.

(a) All rolling stock types must be qualified for operation for their intended track classes in order to demonstrate that the vehicle dynamic response to track alignment and geometry variations are within acceptable limits to assure safe operation. Rolling stock operating in class 6 within one year prior to the promulgation of this subpart shall be considered as being successfully qualified for class 6 track and vehicles presently operating at class 7 speeds by reason of conditional waivers shall be considered as qualified for class 7.

(b) The qualification testing will insure that the equipment will not exceed the vehicle/track performance safety limits specified in § 213.333 at any speed less than 10 mph above the proposed maximum operating speed.

(c) To obtain the test data necessary to support the analysis required in paragraphs (a) and (b) of this section, the track owner shall have a test plan which shall consider the operating practices and conditions, signal system, road crossings and trains on adjacent tracks during testing. The track owner shall establish a target maximum testing speed (at least 10 mph above the maximum proposed operating speed) and target test and operating conditions and conduct a test program sufficient to evaluate the operating limits of the track and equipment. The test program shall demonstrate vehicle dynamic response as speeds are incrementally increased from acceptable class 6 limits to the target maximum test speeds. The test shall be suspended at that speed where any of the vehicle/track performance limits in § 213.333 are exceeded.

(d) At the end of the test, when maximum safe operating speed is known along with permissible levels of cant deficiency, an additional run will be made with the subject equipment over the entire route proposed for revenue service at the speeds the railroad will request FRA to approve for such service and a second run again at 10 mph above this speed. A report of the test procedures and results shall be submitted to FRA upon the completions of the tests. The test report shall include the design flange angle of the equipment which shall be used for the determination of the lateral to vertical wheel load safety limit for the track/vehicle performance measurements required per § 213.333(k).

(e) As part of the submittal required in paragraph (d) of the section, the operator will include an analysis and description of the signal system and operating practices to govern operations in classes 7, 8 and 9. This statement will include a statement of sufficiency in these areas for the class of operation.

(f) Based on test results and submissions, FRA will approve a maximum train speed and value of cant deficiency for revenue service.

§ 213.347 Automotive or railroad crossings at grade.

(a) No at-grade (level) crossings, public or private, or rigid railroad crossings at-grade may coexist with class 8 and 9 track.

(b) If train operation is projected at class 7 speed for a track segment that will include rail-highway grade crossings, the track owner shall submit for FRA's approval a complete description of the proposed warning/barrier system to address the protection of highway traffic and high speed trains.

§ 213.349 Rail end mismatch.

Any mismatch of rails at joints may not be more than that prescribed by the following table—

Class of track	Any mismatch of rails at joints may not be more than the following	
	On the tread of the rail ends (inch)	On the gage side of the rail ends (inch)
Class 6, 7, 8 and 9	1/8	1/8

§ 213.351 Rail joints.

(a) Each rail joint, insulated joint, and compromise joint must be of a structurally sound design and dimensions for the rail on which it is applied.

(b) If a joint bar is cracked, broken, or because of wear allows excessive vertical movement of either rail when all bolts are tight, it must be replaced.

(c) If a joint bar is cracked or broken between the middle two bolt holes it must be replaced.

(d) Each rail must be bolted with at least two bolts at each joint.

(e) Each joint bar must be held in position by track bolts tightened to allow the joint bar to firmly support the abutting rail ends and to allow longitudinal movement of the rail in the joint to accommodate expansion and contraction due to temperature variations. When no-slip, joint-to-rail contact exists by design, the requirements of this section do not apply. Those locations, when over 400 feet long, are considered to be continuous welded rail track and must meet all the requirements for continuous welded rail track prescribed in this subpart.

(f) No rail shall have a bolt hole which is torch cut or burned.

(g) No joint bar shall be reconfigured by torch cutting.

§ 213.352 Torch cut rail

(a) Except as a temporary repair in emergency situations no rail having a torch cut end shall be used. When a rail end is torch cut in emergency situations, speed over that rail must not exceed the maximum allowable for Class 2 track. For existing torch cut rail ends the following shall apply—

(1) Within six months of [the effective date of the final rule], all torch cut rail ends in Class 6 track must be removed.

(2) For class 7, 8, and 9 track, speeds shall be reduced to class 6 until the torch cut rail is replaced.

(b) Following the expiration of the time limits specified in paragraph a of this section, any torch cut rail end not removed must be removed within 30 days of discovery. Speed over that rail must not exceed the maximum allowable for Class 2 track until removed.

§ 213.353 Turnouts and crossovers, generally.

(a) In turnouts and track crossings, the fastenings must be intact and maintained so as to keep the components securely in place. Also, each switch, frog, and guard rail must be kept free of obstructions that may interfere with the passage of wheels. Use of rigid rail crossings at grade is limited per § 213.347.

(b) Track must be equipped with rail anchoring through and on each side of track crossings and turnouts, to restrain rail movement affecting the position of switch points and frogs. Elastic fasteners designed to restrict longitudinal rail movement are considered rail anchoring.

(c) Each flangeway at turnouts and track crossings must be at least 1½ inches wide.

(d) For all turnouts and crossovers, the track owner shall prepare an inspection and maintenance Guidebook for use by railroad employees which shall be submitted to the Federal Railroad Administration. The Guidebook shall contain at a minimum—

(1) Inspection frequency and methodology including limiting measurement values for all components subject to wear or requiring adjustment.

(2) Maintenance techniques.

(e) Each hand operated switch must be equipped with a redundant operating mechanism for maintaining the security of switch point position.

§ 213.355 Frog guard rails and guard faces; gage.

The guard check and guard face gages in frogs must be within the limits prescribed in the following table —

Class of track	Guard check gage,[3] may not be less than	Guard face gage,[4] may not be more than
Class 6 track	4′ 6½″	4′ 5″
Class 7 track	4′ 6½″	4′ 5″
Class 8 track	4′ 6½″	4′ 5″
Class 9 track	4′ 6½″	4′ 5″

[1] A line along that side of the flangeway which is nearer to the center of the track and at the same elevation as the gage line.

[2] A line 5/8 inch below the top of the center line of the head of the running rail, or corresponding location of the tread portion of the track structure.

[3] The distance between the gage line of a frog to the guard line[1] of its guard rail or guarding face, measured across the track at right angles to the gage line.

[4] The distance between guard lines[1], measured across the track at right angles to the gage line.

§ 213.357 Derails.

(a) All industrial or other sidetracks connecting with classes 7, 8 and 9 main tracks shall be equipped with functioning derails of the correct size and type unless railroad equipment on the track, because of grade characteristics cannot move to foul the main track.

(b) Each derail must be clearly visible. When in a locked position a derail must be free of any lost motion which would prevent it from performing its intended function.

(c) Each derail must be maintained to function as intended.

(d) Each derail must be properly installed for the rail to which it is applied.

(e) If a track protected by a derail is occupied by standing railroad rolling stock, the derail shall be in derailing position.

(f) Each derail shall be interlocked with the signal system so as to produce a maximally restrictive signal aspect if the device is not deployed in a completely functional position.

§ 213.359 Track stiffness.

(a) Track shall have a sufficient vertical strength to withstand the maximum vehicle loads generated at maximum permissible train speeds, cant deficiencies and surface defects. For purposes of this section, vertical track strength is defined as the track capacity to constrain vertical deformations so that the track shall return following maximum load to a configuration in compliance with the track performance and geometry requirements of this subpart.

(b) Track shall have sufficient lateral strength to withstand the maximum thermal and vehicle loads generated at maximum permissible train speeds, cant deficiencies and lateral alignment defects. For purposes of this section lateral track strength is defined as the track capacity to constrain lateral deformations so that track shall return following maximum load to a configuration in compliance with the track performance and geometry requirements of this subpart.

§ 213.361 Right of Way

The track owner in class 8 and 9 shall submit a barrier plan, termed a ''right-of-way plan,'' to the Federal Railroad Administration for approval. At a minimum, the plan will contain provisions in areas of demonstrated need for the prevention of-

(a) Vandalism;

(b) Launching of objects from overhead bridges or structures into the path of trains; and

(c) Intrusion of vehicles from adjacent rights of way.

§ 213.365 Visual inspections.

(a) All track must be visually inspected in accordance with the schedule prescribed in paragraph (c) of this section by a person designated under § 213.305.

(b) Each inspection must be made on foot or by riding over the track in a vehicle at a speed that allows the person making the inspection to visually inspect the track structure for compliance with this part. However, mechanical, electrical, and other track inspection devices may be used to supplement visual inspection. If a vehicle is used for visual inspection, the speed of the vehicle may not be more than 5 miles per hour when passing over track crossings and turnouts, otherwise, the inspection vehicle speed shall be at the sole discretion of the inspector, based on track conditions and inspection requirements. When riding over the track in a vehicle, the inspection will be subject to the following conditions—

(1) One inspector in a vehicle may inspect up to two tracks at one time provided that the inspector's visibility remains unobstructed by any cause and that the second track is not centered more than 30 feet from the track upon which the inspector is riding;

(2) Two inspectors in one vehicle may inspect up to four tracks at a time provided that the inspector's visibility remains unobstructed by any cause and that each track being inspected is centered within 39 feet from the track upon which the inspectors are riding;

(3) Each main track is actually traversed by the vehicle or inspected on foot at least once every two weeks, and each siding is actually traversed by the vehicle or inspected on foot at least once every month. On high density commuter railroad lines where track time does not permit an on track vehicle inspection, and where track centers are 15 foot or less, the requirements of this paragraph (b)(3) will not apply; and

(4) Track inspection records must indicate which track(s) are traversed by the vehicle or inspected on foot as outlined in paragraph (b)(3) of this section.

(c) Each track inspection must be made in accordance with the following schedule—

Class of track	Required frequency
6, 7, and 8	Twice weekly with at least 2 calendar-day's interval between inspections.
9	Three times per week.

(d) If the person making the inspection finds a deviation from the requirements of this part, the person shall immediately initiate remedial action.

(e) Each turnout and crossover must be inspected on foot at least weekly. The inspection must be in accordance with the Guidebook required under § 213.353.

(f) In track classes 8 and 9, if no train traffic operates for a period of 8 hours, a train shall be operated at a speed not to exceed 100 miles per hour over the track before the resumption of operations at the maximum authorized speed.

§ 213.367 Special inspections.

In the event of fire, flood, severe storm, temperature extremes or other occurrence which might have damaged track structure, a special inspection must be made of the track involved as soon as possible after the occurrence.

§ 213.369 Inspection records.

(a) Each owner of track to which this part applies shall keep a record of each inspection required to be performed on that track under this subpart.

(b) Except as provided in paragraph (e) of this section, each record of an inspection under § 213.365 shall be prepared on the day the inspection is made and signed by the person making the inspection. Records must specify the track inspected, date of inspection, location and nature of any deviation from the requirements of this part, and the remedial action taken by the person making the inspection. The owner shall designate the location(s) where each original record shall be maintained for at least one year after the inspection covered by the record. The owner shall also designate one location, within 100 miles of each state in which they conduct operations, where copies of record which apply to those operations are either maintained or can be viewed following 10 days notice by the Federal Railroad Administration.

(c) Rail inspection records must specify the date of inspection, the location and nature of any internal defects found, the remedial action taken and the date thereof, and the location of any intervals of track not tested per § 213.339(d). The owner shall retain a rail inspection record for at least two years after the inspection and for one year after remedial action is taken.

(d) Each owner required to keep inspection records under this section shall make those records available for inspection and copying by the Federal Railroad Administrator.

(e) For purposes of compliance with the requirements of this section, an owner of track may maintain and transfer records through electronic transmission, storage, and retrieval provided that—

(1) The electronic system be designed such that the integrity of each record maintained through appropriate levels of security such as recognition of an electronic signature, or other means, which uniquely identify the initiating person as the author of that record. No two persons shall have the same electronic identity;

(2) The electronic storage of each record must be initiated by the person making the inspection within 24 hours following the completion of that inspection;

(3) The electronic system must ensure that each record cannot be modified in any way, or replaced, once the record is transmitted and stored;

(4) Any amendment to a record must be electronically stored apart from the record which it amends. Each amendment to a record must be uniquely identified as to the person making the amendment;

(5) The electronic system must provide for the maintenance of inspection records as originally submitted without corruption or loss of data; and

(6) Paper copies of electronic records and amendments to those records, that may be necessary to document compliance with this part, must be made available for inspection and copying by the FRA and track inspectors responsible under § 213.305. Such paper copies shall be made available to the track inspectors and at the locations specified in paragraph (b) of this section.

(7) Track inspection records shall be kept available to persons who performed the inspection and to persons performing subsequent inspections.

(f) Each Track/Vehicle Performance record required under § 213.333 (g), and (m) shall be made available for inspection and copying by the FRA at the locations specified in paragraph (b) of this section.

Appendix A to Part 213—Maximum Allowable Curving Speeds

TABLE 1.—THREE INCHES UNBALANCE

Degree of curvature	Elevation of outer rail (inches)												
	0	½	1	1½	2	2½	3	3½	4	4½	5	½	6
	Maximum allowable operating speed (mph)												
0°30′	93	100	107	113	120	125	131	136	141	146	151	156	160
0°40′	80	87	93	98	103	109	113	118	122	127	131	135	139
0°50′	72	78	83	88	93	97	101	106	110	113	117	121	124
1°00′	66	71	76	80	85	89	93	96	100	104	107	110	113
1°15′	59	63	68	72	76	79	83	86	89	93	96	99	101
1°30′	54	58	62	66	69	72	76	79	82	85	87	90	93
1°45′	50	54	57	61	64	67	70	73	76	78	81	83	86
2°00′	46	50	54	57	60	63	66	68	71	73	76	78	80
2°15′	44	47	50	54	56	59	62	64	67	69	71	74	76
2°30′	41	45	48	51	54	56	59	61	63	66	68	70	72
2°45′	40	43	46	48	51	54	56	58	60	62	65	66	68
3°00′	38	41	44	46	49	51	54	56	58	60	62	64	66
3°15′	36	39	42	45	47	49	51	54	56	57	59	61	63
3°30′	35	38	40	43	45	47	50	52	54	55	57	59	61
3°45′	34	37	39	41	44	46	48	50	52	54	55	57	59
4°00′	33	35	38	40	42	44	46	48	50	52	54	55	57
4°30′	31	33	36	38	40	42	44	45	47	49	50	52	54
5°00′	29	32	34	36	38	40	41	43	45	46	48	49	41
5°30′	28	30	32	34	36	38	40	41	43	44	46	47	48
6°00′	27	29	31	33	35	36	38	39	41	42	44	45	46
6°30′	26	28	30	31	33	35	36	38	39	41	42	43	45
7°00′	25	27	29	30	32	34	35	36	38	39	40	42	43
8°00′	23	25	27	28	30	31	33	34	35	37	38	39	40
9°00′	22	24	25	27	28	30	31	32	33	35	36	37	38
10°00′	21	22	24	25	27	28	29	31	32	33	34	35	36
11°00′	20	21	23	24	26	27	28	29	30	31	32	33	34
12°00′	19	20	22	23	24	26	27	28	29	30	31	32	33

TABLE 2.—FOUR INCHES UNBALANCE

Degree of curvature	Elevation of outer rail (inches)												
	0	½	1	1½	2	2½	3	3½	4	4½	5	5½	6
	Maximun allowable operating speed (mph)												
0°30′	107	113	120	125	131	136	141	146	151	156	160	165	169
0°40′	93	98	104	109	113	118	122	127	131	135	139	143	146
0°50′	83	88	93	97	101	106	110	113	117	121	124	128	131
1°00′	76	80	85	89	93	96	100	104	107	110	113	116	120
1°15′	68	72	76	79	83	86	89	93	96	99	101	104	107
1°30′	62	65	69	72	76	79	82	85	87	90	93	95	98
1°45′	57	61	64	67	70	73	76	78	81	83	86	88	90
2°00′	53	57	60	63	65	68	71	73	76	78	80	82	85
2°15′	50	53	56	59	62	64	67	69	71	73	76	78	80
2°30′	48	51	53	56	59	61	63	65	68	70	72	74	76
2°45′	46	48	51	53	56	58	60	62	64	66	68	70	72
3°00′	44	46	49	51	53	56	58	60	62	64	65	67	69
3°15′	42	44	47	49	51	53	55	57	59	61	63	65	66
3°30′	40	43	45	47	49	52	53	55	57	59	61	62	64
3°45′	39	41	44	46	48	50	52	53	55	57	59	60	62
4°00′	38	40	42	44	46	48	50	52	53	55	57	58	60
4°30′	36	38	40	42	44	45	47	49	50	52	53	55	56
5°00′	34	36	38	40	41	43	45	46	48	49	51	52	53
5°30′	32	34	36	38	39	41	43	44	46	47	48	50	51
6°00′	31	33	35	36	38	39	41	42	44	45	46	48	49
6°30′	30	31	33	35	36	38	39	41	42	43	44	46	47
7°00′	29	30	32	34	35	36	38	39	40	42	43	44	45
8°00′	27	28	30	31	33	34	35	37	38	39	40	41	42
9°00′	25	27	28	30	31	32	33	35	36	37	38	39	40
10°00′	24	25	27	28	29	30	32	33	34	35	36	37	38
11°00′	23	24	25	27	28	29	30	31	32	33	34	35	36
12°00′	22	23	24	26	27	28	29	30	31	32	33	34	35

APPENDIX B TO PART 1213.—SCHEDULE OF CIVIL PENALTIES [1]

Section	Violation	Willful violation
Subpart A—General:		
213.4(a) Excepted track [2]	$2,500	$5,000
213.4(b) Excepted track [2]	2,500	5,000
213.4(c) Excepted track [2]	2,500	5,000
213.4(d) Excepted track	2,500	5,000
213.4(e):		
1, Excepted track	5,000	7,500
2, Excepted track	7,000	10,000
3, Excepted track	7,000	10,000
213.7 Designation of qualified persons to supervise certain renewals and inspect track	1,000	2,000
213.9 classes or track:		
Operating speed limits	2,500	5,000
213.11 Restoration or renewal of track under traffic conditions	2,500	5,000
213.13 Measuring track not under load	1,000	2,000
Subpart B—Roadbed:		
213.33 Drainage	2,500	5,000
213.37 Vegetation	1,000	2,000
Subpart C—Track geometry:		
213.53 Gage	5,000	7,500
213.55 Alinement	5,000	7,500
213.57 Curves: elevation and speed limitations	2,500	5,000
213.59 Elevation of curved track; runoff	2,500	5,000
213.63 Track surface	5,000	7,500
Subpart D—Track surface:		
213.103 Ballast; general	2,500	5,000
213.109 Crossties:		
(a) Material used	1,000	2,000
(b) Distribution of ties	2,500	5,000
(c) Sufficient number of nondefective ties	1,000	2,000
(d) Joint ties	2,500	5,000
213.113 Defective rails	5,000	7,500
213.115 Rail end mismatch	2,500	5,000
213.121(a) Rail joints	2,500	5,000
213,121(b) Rail joints	2,500	5,000
213.121(c) Rail joints	5,000	7,500
213.121(d) Rail joints	2,500	5,000
213.121(e) Rail joints	2,500	5,000
213.121(f) Rail joints	2,500	5,000
213.121(g) Rail joints	5,000	7,500
213.123 Tie plates	1,000	2,000
213.127 Track spikes	2,500	5,000
213.133 Turnouts and track crossings generally	1,000	2,000
213.135 Switches:		
(a) Through (g)	2,500	5,000
(h) Chipped or worn points	5,000	7,500
213.137 Frogs	2,500	5,000
213.139 Spring rail frogs	5,000	7,500
213.141 Self-guarded frogs	2,500	5,000
213.143 Frog guard rails and guard faces; gage	2,500	5,000
Subpart E—Track appliances and track-related devices:		
213.205 Derails	2,500	5,000
Subpart F—Inspection:		
213.233 Track Inspections	2,000	4,000
213.235 Switch and track crossings inspection	2,000	4,000
213.237 Inspection of rail	2,500	5,000
213.239 Special inspections	2,500	5,000
213.241 Inspection records	1,000	2,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

[2] In addition to assessment of penalties for each instance of noncompliance with the requirements identified by this footnote, track segments designated as excepted track that are or become ineligible for such designation by virtue of noncompliance with any of the requirements to which this footnote applies are subject to all other requirements of Part 212 until such noncompliance is remedied.

Issued in Washington, D.C. on June 19, 1997.

Donald M. Itzkoff,

Deputy Administrator, Federal Railroad Administration.

[FR Doc. 97–16663 Filed 7–2–97; 8:45 am]

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Federal Register

Thursday
July 3, 1997

Part IV

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Small Business Innovation Research Grants Program for Fiscal Year 1998; Solicitation of Applications; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Small Business Innovation Research Grants Program for Fiscal Year 1998; Solicitation of Applications

AGENCY: Cooperative State Research, Education and Extension Service, USDA.

ACTION: Notice of application.

SUMMARY: Notice is hereby given that under the authority of the Small Business Innovation Development Act of 1982 (Pub. L. 97–219), as amended (15 U.S.C. 638) and Section 630 of the Act making appropriations for Agriculture, Rural Development, and Related Agencies programs for fiscal year ending September 30, 1987, and for other purposes, as made applicable by Section 101(a) of Public Law Number 99–591, 100 Stat. 3341, the U.S. Department of Agriculture (USDA) expects to award project grants for certain areas of research to science-based small business firms through phase I of its Small Business Innovation Research (SBIR) Grants Program.

DATES: All phase I proposals must be received at USDA by September 4, 1997. Proposals not received by this date will be returned to the proposing organization without evaluation or consideration for an award, with the following exceptions. Proposals received after September 4, 1997, will be accepted provided they are postmarked (1) September 3, 1997, if sent by overnight courier; (2) September 2, 1997, if sent by priority mail; (3) or August 28, 1997, if sent by regular first class mail.

ADDRESSES: All proposals must be submitted to the following address:

Proposal Services Unit, Grants Management Branch, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2245, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2245.

Note: The address for hand-delivered proposals or proposals submitted using an express mail or overnight courier service is:

Proposal Services Unit, Grants Management Branch, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Room 303, Aerospace Center, 901 D Street, S.W., Washington, D.C. 20024, Telephone: (202) 401–5048.

FOR FURTHER INFORMATION CONTACT: Dr. Charles F. Cleland; Director, SBIR Program; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2243; 1400 Independence Avenue, S.W.; Washington, D.C. 20250-2243. Telephone: (202) 401–4002. Facsimile: (202) 401–6070.

SUPPLEMENTARY INFORMATION: This program will be administered by the Competitive Research Grants and Awards Management, Cooperative State Research, Education, and Extension Service. Firms with strong scientific research capabilities in the topic areas listed below are encouraged to participate. Objectives of the three-phase program include stimulating technological innovation in the private sector, strengthening the role of small businesses in meeting Federal research and development needs, increasing private sector commercialization of innovations derived from USDA-supported research and development efforts, and fostering and encouraging participation of women-owned and socially and economically disadvantaged small business concerns in technological innovation.

The total amount expected to be available for phase I of the SBIR Program in fiscal year 1998 is approximately $4,000,000. The solicitation is being announced to allow adequate time for potential recipients to prepare and submit applications by the closing date of September 4, 1997. The research to be supported is in the following topic areas:

1. Forests and Related Resources
2. Plant Production and Protection
3. Animal Production and Protection
4. Air, Water and Soils
5. Food Science and Nutrition
6. Rural and Community Development
7. Aquaculture
8. Industrial Applications
9. Marketing and Trade

The award of any grants under the provisions of this solicitation is subject to the availability of appropriations.

This program is subject to the provisions found at 7 CFR Part 3403, as amended by 61 FR 25366, May 20, 1996, and 62 FR 26168, May 12, 1997. These provisions set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects. In addition, USDA Uniform Federal Assistance Regulations, (7 CFR Part 3015), Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-free Workplace (Grants) (7 CFR Part 3017, as amended by 61 FR 250), New Restrictions on Lobbying (7 CFR Part 3018), and Managing Federal Credit Programs (7 CFR Part 3) apply to this program. Copies of 7 CFR Part 3403, 7 CFR Part 3015, 7 CFR Part 3017, 7 CFR Part 3018, and 7 CFR Part 3 may be obtained by writing or calling the office indicated below.

The solicitation, which contains research topic descriptions and detailed instructions on how to apply, may be obtained by writing or calling the office indicated below. Please note that applicants who submitted SBIR proposals for fiscal year 1997 or who have recently requested placement on the list for fiscal year 1998 will automatically receive a copy of the fiscal year 1998 solicitation.

Proposal Services Unit, Grants Management Branch, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2245, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2245, Telephone: (202) 401–5048.

Done at Washington, D.C., this 27th day of June 1997.

B.H. Robinson,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 97–17428 Filed 7–2–97; 8:45 am]

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Federal Register

Thursday
July 3, 1997

Part V

Department of Housing and Urban Development

24 CFR Parts 201 and 202

Title I Property Improvement and Manufactured Home Loan Insurance Programs; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 201 and 202

[Docket No. FR–4242–P–01]

RIN 2502–AG94

Title I Property Improvement and Manufactured Home Loan Insurance Programs

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend HUD's regulations for the Title I Property Improvement program. In this rule, HUD proposes to eliminate the portion of the program through which sellers, contractors, or suppliers of goods or services assist borrowers in preparing credit applications or otherwise obtaining Title I property improvement loans from HUD-insured lenders. Property improvement loans would still, however, be available directly from lenders. HUD anticipates that this proposed rule will end the abuses and excessive claims that HUD has experienced in the dealer loan portion of the Title I Property Improvement Loan program. HUD is also proposing technical and conforming amendments to various sections referring to ''dealers'' or ''dealer loans'' to clarify that they apply only to the manufactured home loan program.

DATES: Comment Due Date: September 2, 1997.

ADDRESSES: HUD invites interested persons to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address. HUD will not accept comments sent by facsimile (FAX).

FOR FURTHER INFORMATION CONTACT: Mark W. Holman, Acting Director, Home Mortgage Insurance Division, Department of Housing and Urban Development, Room 9270, 451 Seventh Street, S.W., Washington, DC 20410; telephone (202) 708–2121. This number is not toll-free. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

Under section 2 of title I of the National Housing Act (12 U.S.C. 1703) (the Act), HUD insures approved lenders against losses sustained as a result of borrower defaults on property improvement loans and manufactured home loans. The regulations implementing the Title I programs are in 24 CFR part 201. The regulations currently provide for two methods of obtaining a Title I property improvement loan. The borrower may arrange for a loan directly with the lender (a direct loan), or through the intervention or assistance of a dealer (a dealer loan), such as a seller, a contractor, or a supplier of goods or services. In this proposed rule, HUD seeks to amend the regulations in part 201 to eliminate the dealer loan process for property improvement loans. This proposed rule would not, however, affect the availability of Title I property improvement loans through the direct loan process, nor would it affect the process through which borrowers can obtain Title I manufactured home loans.

HUD's decision to omit dealers from the Title I Property Improvement Loan program stems from a long-standing concern regarding the effectiveness of, and abuses in, the Title I program. As early as 1986, HUD's Office of Inspector General identified significant fraud and abuse in the program, specifically relating to dealer-originated loans. In particular, the Inspector General noted a high percentage of borrowers being taken advantage of by dealers/contractors, problems with approval and supervision of dealers by lenders, and unsatisfactory underwriting of dealer originated loans. In 1993 and 1994, monitoring reviews by HUD's Quality Assurance Division of major Title I lenders revealed extensive dealer fraud and noncompliance with HUD requirements. In 1994 the Inspector General recommended termination of the entire Title I program because of the higher risk these consumer loans represent.

While HUD believes that the Title I property improvement loans fill a niche otherwise unserved by either public or private lending products, HUD is concerned with the need to minimize the financial liability of this program. In particular, HUD has repeatedly addressed the issue of dealer participation in the Title I Property Improvement Loan program. HUD instituted a series of reforms in 1985–1986 to provide for improved lender oversight of dealer participation. (See 50 FR 43516, 43521; October 25, 1985). HUD again amended its regulations in 1991 to tighten dealer requirements and lender oversight further (56 FR 52414; October 18, 1991).

Earlier this year, HUD again reviewed dealer participation in the Title I Property Improvement program. HUD reviewed 245 complaints filed against dealers since December 1995. Those complaints reveal many of the same abuses identified by the Inspector General. These abuses have included deceptive advertising practices, fraudulent certification of work completed, failure to complete specified improvements, falsification of documents, overpricing, and kickbacks.

In addition, a review of claim rates reveals a consistently higher claim rate, dating back to 1987, for dealer loans as compared to direct loans. HUD's analysis of the loans originated in 1987–1994 shows a claim rate for dealer loans of 6.0 percent, and only a 3.5 percent claim rate for direct loans. When analysis of loan performance is focused on those loans outside of California (where both types of loans have a very high 9.2 percent claim rate) dealer loans have a claim rate over 3 times higher than direct loans. The dealer loan claim rate is 5.5 percent, compared to 1.6 percent for direct loans.

HUD believes that the elimination of dealer loans from the Title I Property Improvement Loan program is an appropriate step to protect borrowers from unscrupulous business practices, to ensure greater accountability in the program, and to reduce program claim rates. HUD notes that this proposed rule would not prevent current property improvement dealers from continuing to provide goods and services to borrowers pursuant to the program, but it would require direct lender approval and supervision of the Title I loan that funds these goods and services.

While HUD believes that the elimination of dealer loans from the Title I Property Improvement Loan program is an appropriate step to take to address the longstanding problems with the dealer loan component of the program, HUD invites comments on ways to address this problem other than through the elimination of dealer loans. HUD requests that commenters who submit proposals on alternative ways to resolve this problem specifically address how the proposed alternative would address the systemic flaws and inherent conflicts of interest that currently exist in the dealer loan component of the Title I Property Improvement Loan program.

Proposed Amendments to Parts 201 and 202

This rule proposes to amend the definitions of ''Dealer'' and ''Dealer loan'' in § 201.2 to eliminate the references to property improvement loans, thereby limiting dealers and dealer loans to the manufactured home portion of the Title I program. This rule would also remove references to property improvement dealer loans in § 201.26 regarding conditions for loan disbursement, in § 201.27 regarding requirements for dealer loans, and in § 201.40 regarding postdisbursement loan requirements (such as completion certificates).

In order to strengthen and clarify the prohibition against property improvement dealer loans, however, this proposed rule would do more than simply remove references to such loans from the regulations. This proposed rule would add a sentence to § 201.29 regarding ineligible participants to provide that property improvement dealers (including contractors or their affiliates) cannot assist borrowers in obtaining a property improvement loan. This proposed rule would similarly add a new paragraph to § 201.26 regarding conditions for loan disbursement to provide that the lender must ensure that any contractor used to perform property improvement work must not have had any role in assisting the borrower in obtaining the loan. To supplement these new provisions, this proposed rule would add definitions for the terms ''Affiliate,'' ''Contractor,'' and ''Property improvement dealer.''

This rule also proposes to amend 24 CFR part 202 regarding the approval of lending institutions. Part 202 establishes minimum standards and requirements for the Secretary's approval of lenders to participate in the Title I program. The regulations in part 202 were recently revised as part of HUD's regulatory reinvention efforts (62 FR 20080; April 24, 1997). Today's rule proposes to amend the new §§ 202.6 and 202.7 regarding supervised lenders and nonsupervised lenders (respectively), to provide that HUD-insured lenders cannot make Title I property improvement loans through the dealer loan process.

Findings and Certifications

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866, *Regulatory Planning and Review*, issued by the President on September 30, 1993. Any changes made in this proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, DC 20410.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, DC 20410.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that it will not have a significant economic impact on a substantial number of small entities. The provisions of this proposed rule would prevent dealers from assisting borrowers in preparing credit applications or otherwise obtaining Title I property improvement loans. (The provisions would not prevent dealers from providing information about lenders that participate in the Title I property improvement program.) This proposed rule would not, however, prevent dealers from continuing to provide goods and other services to borrowers with Title I property improvement loans. Additionally, the majority of the Title I property improvement dealer loans involve dealers and dealer lenders that are not small entities and, therefore, HUD does not anticipate that this proposed rule would, if implemented, have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. HUD recognizes, however, that the uniform application of requirements on entities of differing sizes often places a disproportionate burden on small entities. Therefore, HUD specifically solicits comments as to whether this proposed rule would significantly impact a substantial number of small entities, and as to any less burdensome alternatives.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this proposed rule will not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the requirements of this proposed rule are directed to lenders and borrowers, and will not impinge upon the relationship between the Federal Government and State and local governments. As a result, this proposed rule is not subject to review under the Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This proposed rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are:

14.110 Manufactured Home Loan Insurance—Financing Purchase of Manufactured Homes as Principal Residences of Borrowers;

14.142 Property Improvement Loan Insurance for Improving All Existing Structures and Building of New Nonresidential Structures; and

14.162 Mortgage Insurance—Combination and Manufactured Home Lot Loans.

List of Subjects

24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Loan programs—housing and community development, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 202

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, in chapter II of title 24 of the Code of Federal Regulations, parts 201 and 202 are proposed to be amended as follows:

PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

1. The authority citation for 24 CFR part 201 is revised to read as follows:

Authority: 12 U.S.C. 1703; 42 U.S.C. 3535(d).

2. Section 201.2 is amended by adding new definitions of ''*Affiliate*'', ''*Contractor*'', and ''*Property improvement dealer*'', in alphabetical order; and by revising the definitions of ''*Dealer*'' and ''*Dealer loan*''; to read as follows:

§ 201.2 Definitions.

* * * * *

Affiliate. Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person or entity that has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

* * * * *

Contractor means any individual or other legal entity that submits offers for, or is awarded, or reasonably may be expected to submit offers for or be awarded, a contract to perform improvement work pursuant to a property improvement loan insured in accordance with this part. As used in this part, the term ''*contractor*'' includes any affiliate of the contractor.

Dealer means any individual or other legal entity that engages in the business of manufactured home retail sales. All references to the term ''*dealer*'' in this part apply only in the case of manufactured home loans, unless otherwise specified (see definition for ''*Property improvement dealer*'' in this section).

Dealer loan means a manufactured home loan in which a dealer, having a direct or indirect financial interest in the transaction between the borrower and the lender, assists the borrower in preparing the credit application or otherwise assists the borrower in obtaining the loan from the lender. The lender may disburse the loan proceeds solely to the dealer or the borrower, or jointly to the borrower and the dealer or other parties to the transaction.

* * * * *

Property improvement dealer means a seller, contractor, or supplier of goods or services for property improvement.

* * * * *

3. Section 201.20 is amended by revising paragraph (b)(1) to read as follows:

§ 201.20 Property improvement loan eligibility.

* * * * *

(b) *Eligible use of the loan proceeds.* (1) The loan proceeds shall be used only for the purposes disclosed in the loan application. If the borrower plans to use a contractor to carry out the improvement work, the lender shall obtain a copy of a proposal or contract that describes in detail the work to be performed and the estimated or actual cost. If the borrower plans to carry out the improvement work without the services of a contractor, the borrower shall be required to furnish a detailed written description of the work to be performed, the materials to be furnished, and their estimated cost.

* * * * *

4. Section 201.26 is amended by adding a new paragraph (a)(1)(iv); by removing paragraph (a)(5); by redesignating paragraphs (a)(6) and (a)(7) as paragraphs (a)(5) and (a)(6), respectively; and by revising newly redesignated paragraph (a)(5)(iii), to read as follows:

§ 201.26 Conditions for loan disbursement.

(a) * * *

(1) * * *

(iv) A property improvement dealer (as that term is defined in § 201.2) must not have had any role in procuring, directing, or influencing the origination of the loan to the borrower. This prohibition does not, however, restrict a property improvement dealer from providing information to borrowers about lenders that participate in the Title I Property Improvement Loan program.

* * * * *

(5) * * *

(iii) Constitutes an acknowledgement of the borrower's postdisbursement obligation to furnish a completion certificate and to permit an on-site inspection by the lender or its agent in accordance with §§ 201.40 (b) and (c).

* * * * *

5. Section 201.27 is amended by revising paragraphs (a)(1) and (a)(7) to read as follows:

§ 201.27 Requirements for dealer loans.

(a) *Dealer approval and supervision.* (1) The lender may approve only those dealers that, on the basis of experience and information, the lender considers to be reliable, financially responsible, and qualified to perform their contractual obligations to borrowers satisfactorily and to comply with the requirements of this part. In no case, however, may the lender approve a dealer unless the dealer has and maintains a net worth of not less than $50,000 in assets acceptable to the Secretary, and has demonstrated business experience in manufactured home retail sales.

* * * * *

(7) As a condition of dealer approval (or reapproval), the lender may require a dealer to execute a written agreement that, if requested by the lender, the dealer will resell any manufactured home repossessed by the lender under a Title I insured manufactured home purchase loan approved by the lender as a dealer loan involving that dealer.

* * * * *

6. Section 201.29 is amended by adding a sentence to the end, to read as follows:

§ 201.29 Ineligible participants.

* * * No property improvement dealer (as that term is defined in § 201.2) is eligible or permitted to procure, direct, or influence the origination of any loan by a lender under this part.

7. Section 201.40 is amended by revising the introductory text of paragraph (b)(1), by revising (b)(1)(iii), and by revising paragraph (c), to read as follows:

§ 201.40 Postdisbursement loan requirements.

* * * * *

(b) *Requirements for property improvement loans.* (1) After receiving the proceeds of a property improvement loan, and after the work is completed to the borrower's satisfaction, the borrower must submit a completion certificate to the lender, on a HUD-approved form and signed by the borrower under applicable criminal and civil penalties for fraud and misrepresentation, certifying that:

* * * * *

(iii) The borrower has not obtained the benefit of and will not receive any cash payment, rebate, cash bonus, sales commission, or anything of more than nominal value from any property improvement dealer as an inducement for the consummation of the loan transaction.

* * * * *

(c) *Inspection requirement on property improvement loans.* The lender or its agent must conduct an on-site inspection on any property

improvement loan for which the principal obligation is $7,500 or more, and on any property improvement loan for which the borrower fails to submit a completion certificate as required under paragraph (b) of this section. The inspection must be completed within 60 days after receipt of the completion certificate, or as soon as the lender determines that the borrower is unwilling to cooperate in submitting the completion certificate. The purpose of the inspection is to verify the eligibility of the improvements and whether the work has been completed. If the borrower will not cooperate in permitting an on-site inspection, the lender must report this fact to the Secretary.

* * * * *

PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

8. The authority citation for 24 CFR part 202 continues to read as follows:

Authority: 12 U.S.C. 1703, 1709, and 1715b; 42 U.S.C. 3535(d).

9. Section 202.6 is amended by revising paragraph (a) to read as follows:

§ 202.6 Supervised lenders and mortgagees.

(a) *Definition.* A supervised lender or mortgagee is a financial institution that is a member of the Federal Reserve System or an institution whose accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. A supervised mortgagee may submit applications for mortgage insurance. A supervised lender or mortgagee may originate, purchase, hold, service, or sell loans or insured mortgages, respectively. Supervised lenders may not, however, originate a Title I property improvement loan if the origination was procured, directed, or influenced by a property improvement dealer (as that term is defined in 24 CFR 201.2).

* * * * *

10. Section 202.7 is amended by revising paragraph (a) to read as follows:

§ 202.7 Nonsupervised lenders and mortgagees.

(a) *Definition.* A nonsupervised lender or mortgagee is a lending institution that has as its principal activity the lending or investing of funds in real estate mortgages, consumer installment notes, or similar advances of credit, or the purchase of consumer installment contracts, and that is not approved under any other section of this part. A nonsupervised mortgagee may submit applications for mortgage insurance. A nonsupervised lender or mortgagee may originate, purchase, hold, service, or sell insured mortgages, respectively. Nonsupervised lenders may not, however, originate a Title I property improvement loan if the origination was procured, directed, or influenced by a property improvement dealer (as that term is defined in 24 CFR 201.2).

* * * * *

Dated: May 30, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 97–17402 Filed 7–2–97; 8:45 am]

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Federal Register

Vol. 62, No. 128

Thursday, July 3, 1997

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FEDERAL REGISTER PAGES AND DATES, JULY

35337–35658 1
35659–35946 2
35947–36198 3

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6641 (See Proclamation 7011) 35909
6763 (See Proclamation 7011) 35909
7011 35909
Executive Orders:
13052 35659
12852 (Amended by EO 13053) 39945
13053 39945

5 CFR

Proposed Rules:
880 35693

7 CFR

455 ..... 35661, 35662
456 35666
457 ..... 35662, 35666
1137 35947
Proposed Rules:
29 35452
930 36020
1011 36022

10 CFR

Proposed Rules:
430 36024
451 36025

11 CFR

104 35670

12 CFR

902 35948

13 CFR

123 35337

14 CFR

39 ..... 35670, 35950, 35951, 35953, 35956, 35957, 35959
71 35894
Proposed Rules:
39 ..... 35696, 35698, 35700, 35702, 35704, 35706, 35708, 35709, 35711
71 35713
401 36027
411 36027
413 36027
415 36027
417 36027
440 36028

15 CFR

922 35338

16 CFR

601 35586

17 CFR

239 35338
240 35338
249 35338
269 35338

20 CFR

Proposed Rules:
702 35715

24 CFR

Proposed Rules:
201 36194
202 36194
207 35716
251 35716
252 35716
255 35716
266 35716
950 35718
953 35718
955 35718
1000 35718
1003 35718
1005 35718

26 CFR

1 35673
54 35904
602 35904
Proposed Rules:
1 ..... 35752, 35755

29 CFR

2200 35961
2203 35961
2204 35961
2590 35904
4001 35342

30 CFR

902 35342
946 35964
Proposed Rules:
206 36030

32 CFR

176 35343
286 35351

33 CFR

27 35385
100 ..... 35387, 35388, 35390, 35391
144 35392
165 ..... 35392, 35393, 35394, 35395, 35396, 35398, 335398, 35399, 35400, 35401, 35402, 35403, 35405,

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JULY 3, 1997

ENVIRONMENTAL PROTECTION AGENCY

Air quality planning purposes; designation of areas:
- New Jersey; correction; published 7-3-97

Clean Air Act:
- Reformulated gasoline program; ozone nonattainment area inclusion—
  - Arizona; published 6-3-97

Superfund program:
- National oil and hazardous substances contingency plan—
  - National priorities list update; published 7-3-97

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
- Virginia; published 7-3-97

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Practice and procedure:
- Miscellaneous amendments; published 7-3-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Aerospace Technologies of Australia; published 5-13-97

VETERANS AFFAIRS DEPARTMENT

Adjudication; pensions, compensation, dependency, etc.:
- Servicemen's and veterans' group life insurance; amendments; published 7-3-97

Disabilities rating schedule:
- Muscle injuries; published 6-3-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton research and promotion order:
- Imported cotton and cotton content of imported products; supplemental assessment calculation; comments due by 7-7-97; published 6-6-97

Limes grown in Florida and imported; comments due by 7-7-97; published 6-4-97

Milk marketing orders:
- Tennessee Valley; comments due by 7-10-97; published 7-3-97
- Texas; comments due by 7-11-97; published 6-27-97

Peaches grown in—
- Georgia; comments due by 7-7-97; published 6-4-97

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Animal welfare:
- Marine mammals and certain other regulated animals; perimeter fence requirements; comments due by 7-7-97; published 5-6-97

Interstate transportation of animals and animal products (quarantine):
- Tuberculosis in cattle and bison—
  - Accredited-free State status; Wisconsin; comments due by 7-7-97; published 5-7-97

Plant-related quarantine, foreign:
- Unroasted coffee, coffee berries and fruits, etc.; importation into Hawaii and Puerto Rico; prohibition; comments due by 7-8-97; published 5-9-97

Plants-related quarantine; foreign:
- Imported plants and plant products—
  - Potato tubers from Bermuda and potato plants from Newfoundland et al.; comments due by 7-7-97; published 5-7-97

AGRICULTURE DEPARTMENT

Farm Service Agency

Program regulations:
- Rural rental housing assistance; comments due by 7-7-97; published 5-7-97

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Program regulations:
- Rural rental housing assistance; comments due by 7-7-97; published 5-7-97

AGRICULTURE DEPARTMENT

Rural Housing Service

Program regulations:
- Rural rental housing assistance; comments due by 7-7-97; published 5-7-97

AGRICULTURE DEPARTMENT

Rural Utilities Service

Program regulations:
- Rural rental housing assistance; comments due by 7-7-97; published 5-7-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Magnuson Act Provisions; public meetings; comments due by 7-8-97; published 6-12-97

Permits:
- Marine mammals; comments due by 7-7-97; published 6-6-97

South Atlantic Fishery Management Council; public hearings; comments due by 7-11-97; published 6-12-97

CONSUMER PRODUCT SAFETY COMMISSION

Freedom of Information Act; implementation; comments due by 7-7-97; published 5-6-97

Poison prevention packaging:
- Child-resistant packaging requirements—
  - Household products containing petroleum distillates and other hydrocarbons; comments due by 7-11-97; published 4-28-97

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
- Affirmative action reform in Federal procurement; comments due by 7-8-97; published 5-9-97

Freedom of Information Act; implementation; comments due by 7-11-97; published 5-12-97

Military recruiting and Reserve Officer Training Corps program access to institutions of higher education; comments due by 7-7-97; published 4-8-97

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Hazardous air pollutants list; additions and deletions—
  - Research and development facilities; comments due by 7-11-97; published 6-11-97
- Mineral wool production; comments due by 7-7-97; published 5-8-97
- Polymer and resin production facilities (Group IV); comments due by 7-7-97; published 6-6-97
- Wood furniture manufacturing operations; wood furniture component definition; comments due by 7-9-97; published 6-9-97

Air quality implementation plans; approval and promulgation; various States:
- Alabama; comments due by 7-7-97; published 6-6-97
- Arizona; comments due by 7-11-97; published 6-11-97
- Illinois; comments due by 7-9-97; published 6-9-97
- Louisiana; comments due by 7-9-97; published 6-9-97
- Maryland; comments due by 7-7-97; published 6-5-97
- Pennsylvania; comments due by 7-11-97; published 6-11-97

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
- Oregon; comments due by 7-9-97; published 6-9-97
- Washington; comments due by 7-9-97; published 6-9-97

Clean Air Act:
- Special exemptions—
  - Virgin Islands; comments due by 7-10-97; published 6-10-97

Hazardous waste:
- Identification and listing—
  - Petroleum refining process wastes; land disposal restrictions for newly hazardous wastes;

comments due by 7-7-97; published 5-21-97

Class D airspace; comments due by 7-7-97; published 5-19-97

Class E airspace; comments due by 7-7-97; published 5-21-97

VOR Federal airways; comments due by 7-11-97; published 6-2-97

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Occupant crash protection—

Air bag depowering; anthropomorphic test dummy neck flexion, extension, and tension measuring requirements; comments due by 7-7-97; published 5-20-97

TRANSPORTATION DEPARTMENT

Surface Transportation Board

Rail carriers:

Class 1 track safety standards; service obligations over excepted track; comments due by 7-7-97; published 5-7-97

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Alcohol; viticultural area designations:

Davis Mountains, Jeff Davis County, TX; comments due by 7-7-97; published 5-6-97

TREASURY DEPARTMENT
Community Development Financial Institutions Fund

Bank enterprise award program; comments due by 7-7-97; published 3-7-97

TREASURY DEPARTMENT
Customs Service

Financial and accounting procedures:

Harbor maintenance fee, ports subject to; list update; comments due by 7-7-97; published 6-4-97

TREASURY DEPARTMENT
Fiscal Service

Electronic benefits transfer; Financial institutions designation as financial agents; comments due by 7-8-97; published 5-9-97

TREASURY DEPARTMENT
Internal Revenue Service

Excise taxes:

Group health plans; access, portability, and renewability requirements; comments due by 7-7-97; published 4-8-97

Group health plans; health insurance portability; comments due by 7-7-97; published 4-8-97

VETERANS AFFAIRS DEPARTMENT

Loan guaranty:

Electronic payment of all funding fees; comments due by 7-7-97; published 5-7-97

Loan guaranty;

Home loans; credit standards; comments due by 7-7-97; published 5-7-97

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.